

**FILED**  
**05-28-2019**  
**CIRCUIT COURT**  
**DANE COUNTY, WI**  
**2019CV001449**  
**Honorable Peter C**  
**Anderson**  
**Branch 17**

**STATE OF WISCONSIN  
DANE COUNTY**

**CIRCUIT COURT**

*For Official Use:*

EAGLE POINT SOLAR, LLC  
2400 Kerper Blvd.  
Dubuque, IA 52001,  
a foreign limited liability company, and

EAGLE POINT ENERGY 6, LLC  
2400 Kerper Blvd.  
Dubuque, IA 52001,  
a foreign limited liability company,

Plaintiffs,

Case No.

Case Code: 30701

CITY OF MILWAUKEE  
200 E. Wells St.  
Milwaukee, WI 53202,  
a Wisconsin municipal corporation,

Interested Party,

v.

PUBLIC SERVICE COMMISSION OF  
WISCONSIN; REBECCA CAMERON VALCQ,  
in her official capacity as Chair of the Public  
Service Commission of Wisconsin; MICHAEL  
HUEBSCH and ELLEN NOWAK, in their  
official capacities as commissioners of the  
Public Service Commission of Wisconsin,  
4822 Madison Yards Way  
North Tower, 6th Floor  
Madison, WI 53705, and

WISCONSIN ELECTRIC POWER COMPANY  
231 W. Michigan St., P240  
Milwaukee, WI 53203,  
a Wisconsin corporation,

Defendants.

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**COMPLAINT**

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Plaintiffs, Eagle Point Solar, LLC and Eagle Point Energy 6, LLC, by their undersigned attorneys, allege against Defendants as follows:

### **PARTIES**

1. Plaintiff Eagle Point Solar, LLC is an Iowa limited liability company with an office at 2400 Kerper Boulevard, Dubuque, Iowa 52001.

2. Plaintiff Eagle Point Energy 6, LLC is an Iowa limited liability company with an office at 2400 Kerper Boulevard, Dubuque, Iowa 52001.

3. Eagle Point Solar, LLC and Eagle Point Energy 6, LLC are both owned by the same sole member.

4. For the remainder of this Complaint, Eagle Point Solar, LLC and Eagle Point Energy 6, LLC are collectively referred to as “Eagle Point.”

5. The City of Milwaukee (the “City”) is a Wisconsin municipal corporation with its principal place of business at 200 East Wells Street, Milwaukee, Wisconsin 53202. The City is an interested party under Wisconsin Statutes sections 803.03 and 806.04(11).

6. Defendant Public Service Commission of Wisconsin is an agency of the State of Wisconsin with its principal place of business at 4822 Madison Yards Way, North Tower, 6th Floor, Madison, Wisconsin 53705.

7. Defendant Rebecca Cameron Valcq is Chair of the Public Service Commission of Wisconsin. She is sued in her official capacity.

8. Defendant Michael Huebsch is a commissioner of the Public Service Commission of Wisconsin. He is sued in his official capacity.

9. Defendant Ellen Nowak is a commissioner of the Public Service Commission of Wisconsin. She is sued in her official capacity.

10. For the remainder of this Complaint, unless otherwise expressed, the Public Service Commission of Wisconsin, Valcq, Huebsch, and Nowak are collectively referred to as the “PSC.”

11. Defendant Wisconsin Electric Power Company (“WEPCO”) is a domestic corporation with its principal place of business at 231 West Michigan Street, P240, Milwaukee, Wisconsin 53203. WEPCO’s registered agent for service of process is Corporate Creations Network Inc., 4650 West Spencer Street, Appleton, Wisconsin 54914-9106.

### **JURISDICTION AND VENUE**

12. This is an action for declaratory judgment under Wisconsin Statutes section 806.04, seeking declaratory and injunctive relief.

13. This Court has subject matter jurisdiction over this dispute under Wisconsin Constitution article VII, section 8, and Wisconsin Statutes section 753.03.

14. This Court has jurisdiction over the PSC (as an agency) and over Valcq, Huebsch, and Nowak as state officers. *See Lister v. Bd. of Regents of the Univ. of Wis. Sys.*, 72 Wis. 2d 282, 303, 240 N.W.2d 610 (1976). An action for declaratory judgment “will lie against state officials and agencies” when the relief sought from the agency or officials is neither damages nor a declaration functionally equivalent to damages. *Town of Eagle v. Christensen*, 191 Wis. 2d 301, 319–20, 529 N.W.2d 245 (Ct. App. 1995) (citing *Lister*, 72 Wis. 2d at 291).

15. This Court has jurisdiction over WEPCO under Wisconsin Statutes section 801.50(2)(b), because WEPCO is a domestic corporation.

16. Venue is proper in Dane County under Wisconsin Statutes section 801.50(2)(a), because the Dane County is the county where the claim arose; section 801.50(2)(c), because the PSC resides and does substantial business in Dane County; and (alternatively, if neither section 801.50(2)(a) nor 801.50(2)(c) applies) section 801.50(2)(d).

### **RELEVANT LEGAL AUTHORITY**

17. The PSC “has jurisdiction to supervise and regulate every public utility in this state and to do all things necessary and convenient to its jurisdiction.” Wis. Stat. § 196.02(1).

18. The PSC “supervise[s] and regulate[s] . . . public utilit[ies]” by applying Wisconsin Statutes chapter 196 and Wisconsin Administrative Code title PSC. Wisconsin Statutes section 196.49 provides the PSC with enforcement mechanisms against public utilities that violate statutes or regulations.

19. “[N]o public utility . . . in any municipality may commence the construction of any public utility plant, extension or facility, or render service in such municipality directly, or indirectly by serving any other public utility or agency engaged in public utility service or otherwise, unless the public utility has obtained a certificate from the [PSC] authorizing it to transact public utility business.” *Id.* § 196.49(1)(am).

20. “No public utility may begin the construction, installation or operation of any new plant, equipment, property or facility, nor the construction or

installation of any extension, improvement or addition to its existing plant, equipment, property, apparatus or facilities unless the public utility has complied with any applicable rule or order of the [PSC].” *Id.* § 196.49(2).

21. “If the [PSC] finds that any public utility has taken or is about to take an action which violates or disregards a rule or special order under [section 196], the [PSC], in its own name either before or after investigation or public hearing and either before or after issuing any additional orders or directions it deems proper, may bring an action in the circuit court of Dane County to enjoin the action.” *Id.* § 196.49(6).

22. A “public utility” is any “company . . . that may own, operate, manage or control . . . all or any part of a plant or equipment, within the state, for the production, transmission, delivery or furnishing of heat, light, water or power either directly or indirectly to or for the public.” Wis. Stat. § 196.01(5).

23. Offering service “to or for the public” means generating power “intended for and open to the use of all the members of the public who may require it.” *Cawker v. Meyer*, 147 Wis. 320, 325, 133 N.W. 157 (1911). The “public” means the public at large, not a limited subset of the public that stands in a special contractual relationship with the facility owner. By passing statutes that regulate public utilities, the Wisconsin Legislature never intended to regulate sales of electricity that serve a “limited” or “restricted” class of customers. *See id.*

24. In *Cawker*, the Wisconsin Supreme Court held that a landlord that provided power to its tenants and a few neighbors was not a “public utility.” *See id.*

The landlord built a steam plant to provide power to the tenants in its building and then contracted to sell surplus power to three neighboring properties. The state argued that selling power to “any one else than to one’s self” constituted selling power “to the public.” *Id.* at 324. Disagreeing, the Court explained that by passing the public-utilities statutes, the Legislature had not “sought to regulate” “the furnishing of heat, light, or power to tenants or, incidentally, to a few neighbors.” *Id.* Rather, the Legislature had intended to regulate “the furnishing of those commodities to the public, that is, *to whoever might require the same.*” *Id.* (emphasis added). To that end, the key factor is whether the power generated “is intended for and open to the use of all the members of the public who may require it.” *Id.* at 325. Because the generator in *Cawker* served only a “restricted class”—the tenants and a few neighbors—the Court held that the company was not offering service “to or for the public.” *Id.*

25. Subsequent Wisconsin cases have cited *Cawker* and reaffirmed the principle that service to a restricted class is not service “to or for the public.” In *Schumacher v. Railroad Commission*, for example, the Court held that “a group of neighbors who . . . co-operated to build a line to supply themselves with electric current” did not constitute a “public utility.” 185 Wis. 303, 305, 201 N.W. 241 (1924). Indeed, the neighbor group had no purpose “of serving the public generally or any portion of the public outside of those who voluntarily band themselves together.” *Id.* The court explained that, in contrast to the neighbor group’s arrangement, “[i]t is where there is a monopoly or a service is offered to the public

that that which was before private property becomes impressed with a public use and is brought within the field of regulation as a public utility.” *Id.* at 306.

26. In *Ford Hydro-Electric Co. v. Town of Aurora*, a hydropower company owned mostly by the Ford Motor Company built a dam and provided power directly and solely to a Ford Motor Company factory. 206 Wis. 489, 240 N.W. 418 (1932). For tax reasons, the hydropower company *wanted* to be a “public utility.” But neither the hydropower company’s assertion that it was a public utility, nor the statement of purpose in its corporate charter, was determinative. Instead, the Court focused on what the company “actually does,” explaining that “[t]he question is whether the plant is built and operated to furnish power to the public generally.” *Id.* at 495–97. The Court found that the sole purpose of the plant was to sell to one customer and that it was “not built or operated for furnishing to the public generally.” *Id.* at 497. Thus, the hydropower company was not offering service “to or for the public.”

27. A few years later, the Wisconsin Supreme Court held that a power company that furnished electricity to a city was not offering service “to or for the public.” In *Union Falls Power Co. v. Oconto Falls*, the Court examined a contract under which Union Falls “furnishe[d] to the city of Oconto Falls electrical energy . . . at a specified price per electrical unit.” 221 Wis. 457, 460–61, 265 N.W. 722 (1936). Although the city subsequently distributed the power to its residents, Union Falls’ performance of the contract did not constitute a public utility service offered “to or for the public.” “The fact is,” the Court explained, “plaintiff company does not hold itself out as being able, ready, and willing to serve the public,” and it “makes no

offer to serve the public which could be accepted by any member of the public.”

Indeed, Union Falls sold power *only* to the city. *Id.* at 461.

28. In *City of Sun Prairie v. PSCW*, the Court determined that a landlord that provided heat, electricity, and water to the tenants of its 1,000-occupant apartment building was not a “public utility” even though the landlord “will rent an apartment ‘to any responsible person’ who is able to pay the rent.” 37 Wis. 2d 96, 98, 154 N.W.2d 360 (1967). If the purpose of the facility is to serve a “limited class” and not the public at large, then *Cawker* is “determinative.” *Id.*

29. The PSC itself recently ruled that a medical-center subsidiary’s ownership of a steam plant to provide steam to existing members of the medical center “does not constitute a public utility service offered to or for the public.” *Application of Wis. Elec. Power Co. for Authority to Transfer Milwaukee Cty. Power Plant and Related Steam Distribution Assets to Wis. Regional Med. Ctr. Thermal Serv., Inc., Located in the City of Wauwatosa, Milwaukee Cty., Wis.*, Jan. 15, 2016, Final Decision, docket 6630-BS-101 (PSC Ref. # 280476), at 12 [hereinafter *Medical Center*]. A WEPCO affiliate offered to sell an existing steam plant; MRMC Thermal, a wholly-owned subsidiary of Milwaukee Regional Medical Center, agreed to purchase it. Before approving the sale, the PSC needed to decide whether MRMC Thermal’s purchase and use of the plant to provide power to the Medical Center would constitute public utility service offered to or for the public. The PSC ruled “no,” primarily because:



- a. “Following the sale of the [plant], MRMC Thermal will provide steam service only to [the Medical Center’s] existing member entities, all of which have been located on the densely-packed [Medical Center] campus since at least 1988.” *Id.* at 4.
- b. “The configuration of the existing steam distribution system would preclude MRMC Thermal from providing steam service to a larger geographic territory than the [Medical Center] campus.” *Id.*
- c. “The steam would be provided to a limited class that is within close proximity.” *Id.* at 10.
- d. “[H]ighly relevant to the [PSC]’s determination is that MRMC Thermal represents it has only agreed to provide service to the [Medical Center] members . . . .” *Id.* at 11.
- e. “[T]here would be no obligations to provide service to new customers.” *Id.*
- f. “After the sale, MR[MC] Thermal will not be directly or indirectly holding itself out to the public as a provider of steam service.” *Id.*

### FACTUAL ALLEGATIONS

30. Eagle Point is in the business of selling, constructing, operating, and maintaining solar photovoltaic (“PV”) systems that convert sunlight into electricity.

31. The City has adopted the “ReFresh Milwaukee Plan,” a citywide strategic plan to develop a sustainable future by using more renewable energy resources to power City infrastructure.

32. The City faces numerous impediments to developing renewable energy resources, including technical and financial risk, the burden of upfront costs, and its inability to monetize or benefit from federal and state renewable-energy credits and tax incentives.

33. The City is specifically interested in using solar PV systems to satisfy a portion of the electric power needs at seven sites owned by the City (the “City Sites”):

- a. Department of Public Works Field Headquarters, located at 3850 North 35th Street, Milwaukee, Wisconsin 53233;
- b. Department of Public Works Facilities Management, located at 3850 North 35th Street, Milwaukee, Wisconsin 53233;
- c. Central Library, located at 814 West Wisconsin Avenue, Milwaukee, Wisconsin 53233;
- d. Tippecanoe Library, located at 3912 South Howell Avenue, Milwaukee, Wisconsin 53207;
- e. 3rd District Police & Command Center, located at 2333 North 49th Street, Milwaukee, Wisconsin 53210;
- f. Central Repair Garage, located at 2142 West Canal Street, Milwaukee, Wisconsin 53233; and

- g. Center Street Library, located at 2727 West Fond du Lac Avenue, Milwaukee, Wisconsin 53233.

34. The City Sites are located within WEPCO's electric service territory.

35. In early 2018, the City issued a formal request for proposals for a "Vendor Contract for Solar Electric System Installation and Financing." Eagle Point responded to and won the City's RFP. WEPCO did not submit a proposal in response to the RFP. Eagle Point undertook significant planning, design, and engineering work on the PV systems to be installed at the City Sites.

36. On October 1, 2018, the City and Eagle Point executed (and later amended) a Solar Services Agreement. A true and correct copy of the Solar Services Agreement, including the amendment, is attached as **Exhibit A**.

37. The primary characteristics of the Solar Services Agreement are as follows:

- a. Eagle Point will construct, operate, maintain, and partially own a solar PV system at each of the City Sites.
- b. The solar PV systems will be installed behind the City's point of common coupling with the electric grid.
- c. No WEPCO distribution lines or other WEPCO facilities or equipment will be used to transport electricity generated by the solar PV systems to the City Sites.
- d. Eagle Point will own approximately 80% of each solar PV system, and the City will own approximately 20%.

- e. Eagle Point will provide a package of services to the City, including financing the costs of acquiring the solar PV systems, monetizing renewable electricity incentives related to the systems (and thereby reducing the capital cost of the project to the City to what a taxable entity would incur), maintaining and operating the systems on an ongoing basis, and directing the full output of the systems to the City for consumption at the City Sites.
- f. Each solar PV system will provide electricity solely to the City Site upon which it is located. In other words, the electricity generated by a particular City Site's solar PV system will provide electricity only to that particular City Site.
- g. Eagle Point will charge the City a solar services payment in accordance with a fee schedule included in the Solar Services Agreement. The charges will be fixed—not on a price-per-kWh basis—and do not contain any form of true-up mechanism.
- h. Eagle Point is entitled to all tax benefits and incentives, other than the environmental attributes, associated with the solar PV systems.
- i. The City has a right to buy out Eagle Point's ownership interest in the solar PV systems at a fixed schedule over the term of the contract.

- j. Eagle Point and the City will comply with all applicable laws and regulations relating to the operation of the solar PV systems.

38. Under the Solar Services Agreement, Eagle Point will provide electricity only to the City at the specified City Sites. Neither Eagle Point nor the City will sell any electricity generated by the solar PV systems to any third party, including WEPCO. Eagle Point will not represent, advertise, or hold itself out to the public as a provider of electricity, and Eagle Point will not provide electricity to or for the public.

39. The electricity generated by the solar PV system at each City Site will provide less than the total capacity needed at that City Site. Eagle Point specifically designed each solar PV system to generate electricity less than the respective City Site's total capacity and to ensure that excess electricity would not be pushed out onto the grid.

40. Each City Site will remain connected to the electric grid, and the City will continue to purchase electricity from WEPCO for consumption at the City Sites to meet each City Site's remaining electricity needs.

41. Eagle Point has expended substantial resources in performing the Solar Services Agreement up to this point.

42. In November 2018, Eagle Point submitted seven interconnection applications to WEPCO, one for each City Site (the "Interconnection Applications"), in accordance with Wisconsin Administrative Code chapter PSC 119.

43. WEPCO disapproved the Interconnection Applications. WEPCO stated its sole reason for the disapprovals in a letter, dated November 29, 2018, from Theodore T. Eidukas (WEPCO) to counsel for Eagle Point. In that letter, WEPCO stated that it “cannot legally grant the [Interconnection Applications] because the [Solar Services Agreement] constitutes an arrangement to sell electricity at retail to an existing customer of [WEPCO] contrary to Wisconsin law.” WEPCO added:

Because [WEPCO] already provides retail electric service to the City, Wisconsin law prohibits Eagle Point from doing so. Accordingly, granting Eagle Point’s interconnection requests would further an unlawful arrangement. There is no requirement under Wisconsin law that [WEPCO] interconnect the facilities owned by a third party who intends to provide electric service to a retail customer already served by [WEPCO].

44. By disapproving the Interconnection Applications, WEPCO interfered with Eagle Point’s and the City’s respective abilities to perform the Solar Services Agreement. At no point before its letter did WEPCO object to the City’s RFP, even though the City released the RFP to the public and provided it to WEPCO, and even though the City was actively planning solar PV systems for the City Sites with input from WEPCO’s engineers.

45. In short, WEPCO disapproved the Interconnection Applications on the grounds that in performing the Solar Services Agreement, Eagle Point is or would be a “public utility” under Wisconsin Statutes section 196.01(5).

46. If in performing the Solar Services Agreement, Eagle Point is or would be a “public utility” under Wisconsin Statutes section 196.01(5), then: the Solar Services Agreement might be invalid and unenforceable; the PSC would be able to “supervise and regulate” Eagle Point, Wis. Stat. § 196.02(1); and the PSC would be

able to apply to or enforce against Eagle Point any part of Wisconsin Statutes section 196.49.

47. But in performing the Solar Services Agreement, Eagle Point is not and will not be a “public utility” under section 196.01(5).

48. In performing the Solar Services Agreement, Eagle Point will not be providing power “to or for the public,” as that phrase has been interpreted by the Wisconsin Supreme Court, *see supra* ¶¶ 22–28:

- a. Just like the steam generator in *Cawker*, Eagle Point will serve a “restricted class” of one—the City. 147 Wis. at 325.
- b. Electricity generated by a particular City Site’s solar PV system will be directed *only* to the City and *only* for use at that particular City Site. *See id.* No electricity will be transported to the distribution grid or to any other site.
- c. The electricity generated by the solar PV systems will not be “intended for” or “open to the use of” “all the members of the public who may require it.” *Id.*
- d. Like the contractor in *Union Falls*, Eagle Point will be “mak[ing] no offer to serve the public which could be accepted by any member of the public.” 221 Wis. at 461. Eagle Point only entered into the Solar Services Agreement because the City solicited proposals through the RFP. Eagle Point did not make a general offer to the public.

- e. Like the generators in *Ford Hydroelectric* and *Union Falls*, Eagle Point will be providing power to only one customer and will not be holding itself out to the public as an electricity provider.

49. Eagle Point's performance of the Solar Services Agreement will parallel MRMC Thermal's ownership and use of the steam plant in *Medical Center*, *see supra* ¶ 29:

- a. Eagle Point "will provide [electricity] service only to" the City at the specified City Sites. *Medical Center*, PSC Ref. # 280476 at 4.
- b. Neither Eagle Point nor the City will sell any electricity generated by the solar PV systems to any third party, including WEPCO. *See id.*
- c. Eagle Point will "provide[]" electricity "to a limited class" of one: the City. *Id.* at 10.
- d. The Solar Services Agreement between Eagle Point and the City is a discrete contract between two entities for a discrete number of solar PV systems. Under the Solar Services Agreement, Eagle Point has "only agreed to provide" electricity to the City at the specified City Sites. *Id.* at 11.
- e. Under the Solar Services Agreement, Eagle Point has "no obligations to provide [electricity] service to new customers." *Id.*



- f. In performing the Solar Services Agreement, Eagle Point “will not be directly or indirectly holding itself out to the public as a provider of [electricity].” *Id.*

50. Additional characteristics of the solar PV systems distinguish the Solar Services Agreement from a public utility service offered “to or for the benefit of the public”:

- a. The solar PV systems will be installed behind the City’s point of common coupling with the electric grid.
- b. No WEPCO distribution lines or other WEPCO facilities or equipment will be used to transport electricity generated by the solar PV systems to the City Sites.
- c. The City owns a portion of the solar PV systems and has a right to buy out Eagle Point’s ownership interest at a fixed schedule over the term of the contract.

51. In addition, performing the Solar Services Agreement does not animate the purposes of either the regulation of public utilities under Wisconsin Statutes chapter 196 (or Wisconsin Administrative Code title PSC) or the concomitant grant of jurisdiction to the PSC to “supervise and regulate . . . public utilit[ies] . . . .” Wis. Stat. § 196.02(1).

52. “[T]he predominant purpose underlying the public utilities law is the protection of the consuming public rather than the competing utilities.” *Wis. Power & Light Co. v. Pub. Serv. Comm’n*, 45 Wis. 2d 253, 259 (1969). While ratemaking is

designed to allow public utilities an opportunity to earn a fair return, it does so to preserve continued public access to essential goods and services on reasonable terms. On the other hand, there is no clear public interest rationale for regulating Eagle Point as a public utility. To do so would actually invert the purpose of the public-utilities statutes by effectively protecting a public utility's business interests at the expense of its customer (the City).

53. Another justification for the regulation of public utilities is the existence of a natural monopoly. See *Shepard v. Milwaukee Gas Light Co.*, 6 Wis. 539, 545 (1858). This justification does not apply here. In performing the Solar Services Agreement, Eagle Point will not be a natural monopoly such that it would need the buy-in of the public at large to support its business model. Because it will not enjoy natural-monopoly privilege, Eagle Point must instead compete vigorously with other on-site renewable energy service providers in a competitive market. Indeed, Eagle Point only obtained the right to enter into the Solar Services Agreement after participating in, and winning, an RFP. Regulating Eagle Point as a public utility would be anti-competitive and would benefit only WEPCO (the incumbent monopoly public-utility) at the expense of the City (the customer).

54. Another purpose of the regulation of public utilities is to avoid the duplication of service, such as multiple sets of distribution lines in the same area. The Court in *Wisconsin Traction Light, Heat & Power Co. v. Menasha*, explained that the public-utilities statutes were “undoubtedly framed on the theory that certain kinds of business were of such a character that the duplication of plants for

the purpose of carrying them on was undesirable because it resulted in an economic waste, the loss from which in the end usually fell upon the consumer.” 157 Wis. 1, 7 (1914). The Court elaborated: “One of the main purposes of the law was to avoid duplication, and it was thought that by efficiently controlling the rates to be charged by a single utility the consumer would derive the benefit resulting from economy in production.” *Id.* at 8. When electricity is generated on-site, like under the Solar Services Agreement, no duplication of plants or services occurs, and there is no need for uniform prices to protect the consuming public.

55. Another purpose of the regulation of public utilities is to protect against unequal bargaining power. In *Superior Water, Light & Power Co. v. Superior*, the Court explained how state regulation of utility businesses was intended to help address the inherent imbalance in power between monopoly utilities and municipalities:

The public utility law was enacted as a remedy for a well-recognized public evil. The relations existing between the respective municipalities and their public utilities were most unsatisfactory. The impotency of the municipalities to deal with them so as to secure adequate and satisfactory service for reasonable charges was abundantly demonstrated.

174 Wis. 257, 285 (1921). In contrast, with respect to the Solar Services Agreement, Eagle Point does not have undue influence or unequal bargaining power over the City. Eagle Point operates in a competitive market and negotiated with the City at arm’s length.

56. The Legislature never intended to “abridge the right to contract” for on-site power that is not “intended for” or “open to” all members of the public. *See*

*Cawker*, 147 Wis. at 325–26. “The statute was intended to include those, and only those, who furnished the commodities therein named to or for the public. It was not intended to affect the relation of landlord and tenant, or to abridge the right to contract with a few neighbors for a strictly incidental purpose, though relating to a service covered by it.” *Id.* at 327.

57. Ultimately, the PSC may exercise its jurisdiction to “supervise and regulate . . . public utility[ies],” Wis. Stat. § 196.02(1), only so far as necessary to serve the public interest and advance the purposes of Wisconsin Statutes chapter 196. Beyond that it may go “no farther.” *Chippewa Power Co. v. R.R. Comm’n of Wis.*, 188 Wis. 246, 253 (1925). The “line has thus been definitely drawn and the limitations firmly and definitely fixed.” *Id.*

#### ADMINISTRATIVE PROCEEDINGS

58. On March 6, 2019, Eagle Point filed with the PSC an “Appeal of Denial of Application for Interconnection, Request for Contested Case Hearing, and Petition for Declaratory Ruling.” *Appeal of Denial of Application for Interconnection, Request for Contested Case Hearing, and Petition for Declaratory Ruling of Eagle Point Solar, LLC and Eagle Point Energy 6, LLC*, Mar. 6, 2019, Application, docket 9300-DR-104 (PSC Ref. # 360787). In the application, Eagle Point appealed WEPCO’s disapproval of the Interconnection Applications and petitioned for a declaratory ruling that in performing the Solar Services Agreement, Eagle Point is not and will not be a “public utility” under Wisconsin Statutes section 196.01(5).

59. On May 2, 2019, the PSC held an open meeting, during which it considered Eagle Point’s application.

60. On May 3, 2019, the PSC issued an Order declining to open a docket on the declaratory-ruling portion of Eagle Point's application. PSC Ref. # 365974. That is, the PSC refused to declare one way or another whether in performing the Solar Services Agreement, Eagle Point is not and will not be a "public utility" under Wisconsin Statutes section 196.01(5).

61. On May 6, 2019, the PSC issued a Notice of Proceeding on the appeal portion of Eagle Point's application. PSC Ref. # 366083. In particular, the Notice stated:

THIS IS A PROCEEDING to investigate the appeal of the denial of application for interconnection of [Eagle Point] by [WEPCO]. . . . The [PSC] intends to investigate whether WEPCO lawfully denied interconnection to Eagle Point pursuant to Wis. Admin. Code ch. PSC 119. As the [PSC] declined to open a docket on Eagle Point's petition for declaratory ruling, the [PSC] *will not investigate or address the applicability of Wis. Stat. § 196.01(5) to Eagle Point* in this proceeding.

(Emphasis added.)

**CAUSE OF ACTION  
DECLARATORY JUDGMENT (WIS. STAT. § 806.04)**

62. Wisconsin Statutes section 806.04 authorizes entry of a declaratory judgment and injunctive relief based on that declaratory judgment.

63. Eagle Point and the City have legally protectable interests in the Solar Services Agreement.

64. There is a controversy and an uncertainty about whether, in performing the Solar Services Agreement, Eagle Point is or will be a "public utility" under Wisconsin Statutes section 196.01(5).

65. There is a controversy and an uncertainty about whether the PSC may “supervise and regulate” Eagle Point, Wis. Stat. § 196.02(1), or apply to or enforce against Eagle Point any part of Wisconsin Statutes section 196.49.

66. There is a controversy and an uncertainty about whether the Solar Services Agreement is a valid and enforceable contract.

67. WEPCO has interfered with, and likely will continue to interfere with, the performance of the Solar Services Agreement.

68. If it proceeds with performing the Solar Services Agreement, Eagle Point faces a real risk of adverse action by the PSC or WEPCO.

69. Eagle Point is adverse to both the PSC and WEPCO.

70. Eagle Point, the City, the PSC, and WEPCO are “parties who have or claim any interest which would be affected by the declaration . . . .” Wis. Stat. § 806.04(11).

71. The controversies at issue are ripe for determination.

72. A judgment or decree in this action will terminate the controversies and remove uncertainties giving rise to the proceeding.

73. Eagle Point has the right to perform the Solar Services Agreement without “supervis[ion] and regulat[ion]” by the PSC. Wis. Stat. § 196.02(1).

74. Eagle Point has been or will be irreparably harmed, and its rights will be violated, if the PSC “supervise[s] and regulate[s]” Eagle Point, Wis. Stat. § 196.02(1), or applies to or enforces against Eagle Point any part of Wisconsin Statutes section 196.49.

75. Eagle Point has the right to perform the Solar Services Agreement without interference by WEPCO.

76. Eagle Point has been or will be irreparably harmed—and its rights will be violated—if WEPCO interferes with the performance of the Solar Services Agreement.

77. Eagle Point has no adequate remedy at law.

### **PRAYER FOR RELIEF**

The Court should:

(a) Declare that in performing the Solar Services Agreement, Eagle Point is not and will not be a “public utility” under Wisconsin Statutes section 196.01(5);

(b) Declare that the PSC has no jurisdiction to “supervise and regulate” Eagle Point under Wisconsin Statutes section 196.02(1);

(c) Declare that the Solar Services Agreement is a valid and enforceable contract;

(d) Enjoin the PSC from attempting to apply to or enforce against Eagle Point any part of Wisconsin Statutes section 196.49, and from otherwise attempting to supervise or regulate Eagle Point;

(e) Enjoin the PSC from interfering with the performance of the Solar Services Agreement;

(f) Enjoin WEPCO from interfering with the performance of the Solar Services Agreement;

(g) Costs, fees, and interest as available under applicable law; and

(h) Other relief the Court deems just and proper.

**PLAINTIFF HEREBY DEMANDS A JURY TRIAL.**

Dated this 28th day of May, 2019.

HUSCH BLACKWELL LLP  
Attorneys for Plaintiffs Eagle Point  
Solar, LLC and Eagle Point Energy 6,  
LLC

By: **Electronically signed by**  
**Eric M. McLeod**

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**SOLAR SERVICES AGREEMENT**

This SOLAR SERVICES AGREEMENT (this "Agreement") is made and entered into as of \_\_\_\_\_, 2018 (the "Effective Date") by and between Eagle Point Energy-6, LLC, an Iowa Limited Liability Company ("Provider" or "EPE"), and the City of Milwaukee Wisconsin, a Wisconsin municipal corporation ("Customer"). Each of Provider and Customer are sometimes referred to as a "Party" and collectively as the "Parties."

**RECITALS**

**WHEREAS**, Customer operates its facilities in Milwaukee Wisconsin at the Designated Premises (as defined herein); and

**WHEREAS**, the Designated Premises are owned by Customer (in its capacity as owner of the Premises, "Owner"); and

**WHEREAS**, Customer desires to grant access to Provider to utilize certain available ground and roof space owned by Customer at the Designated Premises for the construction, operation and maintenance of six electric solar installations (each, an "Installation") totaling approximately 1,075 kilowatts (total dc rated module capacity) (together, the Installations shall comprise the "System"); and

**WHEREAS**, Customer is the recipient of (i) a \$211,882 Focus on Energy Renewable Energy Competitive Incentive Program ("RECIP") grant, the proceeds of which will be utilized to purchase and separately own a significant portion of the System after achievement of the Commercial Operations Date; and (ii) a City of Milwaukee cash grant of \$100,000, the proceeds of which will be utilized to purchase and separately own a significant portion of the System upon execution of this Agreement; and

**WHEREAS**, Provider and Customer shall both be owners of different parts of the System as described more fully on Exhibit C, and as such will participate in an Operating Committee to oversee management of the System, as provided further herein;

**WHEREAS**, Customer is also implementing energy efficiency measures at the Designated Premises;

**WHEREAS**, through Common Council file number 091066, the Customer has a goal of getting 25% of its power from renewable energy sources;

**WHEREAS**, through Common Council file number 180457, the Customer is authorized to execute this Agreement;

**NOW, THEREFORE**, in consideration of the promises and the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Provider and Customer hereby agree as follows:

EXHIBIT A

## AGREEMENT

1. **DEFINITIONS.** Unless otherwise defined herein, capitalized terms shall have the respective meanings set forth in Exhibit A.

2. **PROVISION OF SOLAR ENERGY CAPACITY.**

2.1 Energy. Provider shall deliver to Customer the System and corresponding capacity to produce solar energy in accordance with the fixed energy service fee schedule depicted on Exhibits B-1, subject to the annual adjustments shown on such Exhibit. Provider shall deliver the Energy to the Delivery Point, and Customer shall accept the Energy delivered for the full Delivery Term, as defined below. Provider shall maintain the System and its expected capacity as described herein.

2.2 Contract Term; Delivery Term. This Agreement shall have a delivery term of twenty-five (25) years commencing on the Commercial Operation Date (the "Delivery Term"); provided that the Delivery Term may be extended by Customer, for one five (5) year period upon delivering written notice to Provider not less than sixty (60) days nor more than one hundred and twenty (120) days prior to the expiration of the Delivery Term. The term of this Agreement shall commence on the Effective Date and shall end upon the expiration of the Delivery Term, unless terminated earlier or extended in accordance with the terms of this Agreement (the "Contract Term").

2.3 Ownership of System by Provider, and Tax Benefits.

2.3.1 Environmental Attributes. For purposes of this agreement, the Provider shall assign the right, title, and interest and any and all Environmental Attributes related to the System to the Customer.

2.3.2 Tax Benefits. For purposes of this Agreement, except as more fully described on Exhibits A and C, Provider shall own the System, and Provider shall have all right, title, and interest in and to all Tax Benefits related to the System. Any Tax Benefit related to the System that is initially credited or paid to Customer shall be assigned by Customer to Provider without delay. At Provider's expense, Customer agrees to cooperate with Provider in any applications for Tax Benefits related to the System.

2.3.3 Assistance with Permits, Environmental Attributes and Tax Benefits. Customer shall promptly assist and cooperate with Provider in acquiring and maintaining in effect all necessary permits and approvals for the System from Governmental Authorities. Customer shall comply with all laws, regulations and rules relating to acquiring and maintaining Tax Benefits and shall deliver to Provider copies of any documentation related thereto that is required by law to be in the name or physical control of Customer. Provider shall inform Customer of its obligations with respect to such permits, approvals, laws, regulations, and rules and reimburse Customer

for its reasonable and necessary third-party costs incurred in relation to Customer's assistance with such matters.

2.3.4 Impairment of Tax Benefits. Customer shall not take any action or suffer any omission that would have the effect of reducing or impairing the value to Provider of the Tax Benefits. Customer shall promptly notify Provider of any event, action or omission that could have the effect of reducing or impairing the value of the Tax Benefits. Upon the occurrence of any such event, action or omission, Customer shall consult with Provider as necessary to prevent reduction or impairment of the value of Tax Benefits.

2.3.5 The System shall be co-owned by the Provider and Customer as described on Exhibit C.

### 3. THE SYSTEM.

3.1 Construction, Operation, and Maintenance of the System. Provider shall be responsible for the construction, installation, operation, and maintenance of the System in a manner consistent with Prudent Operating Practice, including those portions of the System owned by Customer. If the supply of Energy from an Installation is interrupted as a result of an Installation malfunction, Provider shall use all commercially reasonable efforts to remedy such interruption. Both Parties shall comply with all applicable laws and regulations relating to the operation of the System and the generation and sale of Energy, including obtaining and maintaining in effect all relevant approvals and permits. Notwithstanding limits to the warranties on the equipment, the Provider will replace system components such as panels, inverters, racking, metering and other components at its costs as needed throughout the life of the Agreement to ensure the System is operational.

For clarity, notwithstanding Customer's direct and separate ownership of the equipment designated on Exhibit C, Provider agrees, at its sole cost and expense, to maintain Customer's equipment in good condition and repair in accordance with any applicable contractor, subcontractor and vendor warranties, all operation and maintenance manuals, usual and customary professional installation practices, the requirements of this Agreement and applicable laws and standards.

Provider shall confirm and provide evidence of the following to the Customer:

- A. System meets all relevant building and electrical codes of the cities of Milwaukee, as well as the State of Wisconsin.
- B. System modules and racking complies with wind uplift requirements per the American Society of Civil Engineers Standard for Minimum Design Loads for Buildings and Other Structures, and must be able to withstand design wind speeds of at least 100 mph (3-second gusts).
- C. System installation conforms to Occupational Health and Safety Administration (OSHA) directives.

- D. System components adhere to Uniform Building Code (UBC) fire code regulations.
- E. Provider has obtained and executed necessary interconnections with Buyer's incumbent utility provider, We Energies.
- F. System installation and operation will not compromise roof and building warranties.

3.2 Maintenance of Health and Safety. Provider shall take all reasonable safety precautions with respect to the operation, maintenance, repair, and replacement of the System, including those portions of the System owned by Customer, and shall comply with all applicable health and safety laws, rules, regulations, and permit requirements. If Provider becomes aware of any circumstances relating to the Designated Premises or either of the Installations that creates an imminent risk of damage or injury to any Person or any Person's property (and, should Customer become aware of such circumstances, Customer shall promptly notify Provider with respect thereto), Provider shall take prompt action to prevent such damage or injury and shall promptly notify Customer. Such Provider action may include disconnecting and removing all or a portion of any Installation or suspending the supply of Energy to Customer.

3.3 Permits and Licenses. Provider shall be responsible for and bear all costs associated with applying for and obtaining all permits, license and approvals required for the construction, installation, operation and maintenance of the System. Upon Provider's request, Customer shall assist and cooperate with Provider, to acquire and maintain approvals, permits, and authorizations or to facilitate Provider's compliance with all applicable laws and regulations related to the construction, installation, operation, maintenance, and repair of the System, including providing any building owner or occupant authorizations, signing and processing any applications for permits, local utility grid interconnection applications, and rebate applications as are required by law to be signed by Customer. Customer shall also deliver to Provider copies of any necessary approvals, permits, rebates, or other financial incentives that are required by law in the name or physical control of Customer. Provider shall reimburse Customer for reasonable and necessary third-party costs incurred by Customer in relation to Customer's assistance with such matters.

3.4 Commercial Operation Date. Provider shall notify Customer of the occurrence of the System Operation Date as well as the Commercial Operation Date.

3.5 Provider's Taxes. Subject to Section 3.6, Provider is solely responsible for all income, gross receipts, ad valorem, personal property, or other similar taxes and any and all franchise fees or similar fees relating to Provider's ownership of the System.

3.6 Customer's Taxes. Customer is responsible for paying timely all taxes (if applicable), charges, levies, and assessments against the Designated Premises. Customer is also responsible for paying, if any, all sales, use, property, and other taxes, and any and all franchise fees or similar fees assessed against Customer as a result of Customer's purchase of services herein and, in the event that Customer exercises the Purchase Option, its purchase and ownership of the System, which fees are not otherwise the obligation of Provider.

3.7 Notice of Damage. Customer shall promptly notify Provider of any physical conditions or other circumstances of which Customer becomes aware that indicate there has been or might be damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System.

#### 4. ACCESS RIGHTS AND LIENS

##### 4.1 USE OF DESIGNATED PREMISES

4.1.1 Permitted Use. Pursuant to this Agreement, and for the Contract Term hereof, Customer hereby grants to Provider the license to use, have access to, modify, and store its equipment on the Designated Premises depicted on Exhibit D as reasonably necessary to design, construct, install, start-up, test, operate and maintain the System and for no other purpose. Customer reserves the right to grant additional licenses, whether recorded or unrecorded, that do not unreasonably interfere with Provider's use of the Designated Premises or result in any violation of Customer's obligations under this Agreement and do not interfere with the installation, operation, maintenance, or removal of the System. The right of access contained herein does not grant the Provider access to any portion of Customer's property except as reasonably necessary for the Provider to access the System, on the Designated Premises.

4.1.2 Access to System. Provider shall have access to the Designated Premises and System during the Contract Term and for 180 days after expiration or earlier Termination of this Agreement to remove the System or any portion thereof, if necessary, pursuant to the applicable provisions herein. Customer shall not interfere with or handle any of Provider's equipment or any portion of the System, except in the case of emergency, without written authorization from Provider; provided however that Customer shall at all times have the right to observe the installation of, or removal of, the System. Before accessing the Designated Premises, Provider shall provide at least twenty-four (24) hours' notice to the Customer, unless in the event of an emergency, in which case, Provider shall notify Customer as soon as practicable in order to ensure emergency access may be arranged.

4.1.3 Solar Access. Customer agrees that it will not do or suffer to be done on its own property anything that causes reduction of the amount of solar radiation reaching the System. Furthermore, Customer shall take all reasonable measures to assist Provider in attempting to prevent buildings, structures or flora from overshadowing or otherwise blocking the System's access to direct sunlight. The preceding clause shall not be interpreted in such a manner so as to preclude Customer's legislative or administrative bodies or employees from the exercise of unrelated judgments in matters zoning, historic preservation, or other matters requiring the exercise of judgment in the fulfilment of their duties.



4.1.4 Non-Interference. Except as provided for in Section 4.2 or Section 8, Customer shall not take any actions that interfere with the installation, operation, maintenance or removal of any portion of the System or that interfere with the generation or delivery of Energy from any portion of the System.

4.1.5 [RESERVED]

4.1.6 Contractors. Customer acknowledges that Provider may retain one or more contractors to perform its obligations hereunder. Customer agrees that such contractors shall be permitted to enjoy the rights of access and entry granted to Provider under this Agreement in connection with their performance of services in connection with the System, subject to the terms and conditions of this Agreement and Provider's separate contractual arrangements with such contractors. It is understood and acknowledged that Provider will inform contractors of applicable roof and building warranties to ensure contractor use of materials and installation of panels does not compromise such warranties.

4.1.7 Maintaining Premises. Customer shall maintain the Designated Premises in good condition and repair consistent with sound engineering and operating practices.

4.1.8 Customer's Use of Premises. Subject to Customer's obligations hereunder and the rights granted Provider hereunder, Provider shall design, construct, operate, maintain, and repair the System, including those portions of the System owned by Customer, in a manner that will not unreasonably obstruct or interfere with the Customer's use of the Designated Premises or the rights or duties of any employees of Customer.

4.1.9 Notice of Loss. Customer shall promptly notify Provider of any matters it is aware of pertaining to any damage to or loss of use of any Installation, or a condition that could reasonably be expected to adversely affect the System.

4.2 Liens. Except as otherwise expressly provided herein, the Parties shall not directly or indirectly cause, create, incur, assume or suffer to exist a mortgage, pledge, lien (including mechanics', labor or materialman's lien), charge, security interest, encumbrance or claim of any nature ("Liens") on or with respect to the System, the Designated Premises, or any interest therein. If either Party breaches its obligations under this Section, it shall immediately notify the other in writing, shall promptly cause such Lien to be discharged and released of record without cost to the other, and shall indemnify the other against all costs and expenses incurred in discharging and releasing such Lien. If prompt action is not taken by the Party causing such Lien to be created to remove the Lien, the other Party has the right to remove such Lien at the other's cost and expense.

## 5. INVOICING AND METERING.

### 5.1 INVOICING.

5.1.1 Prior to COD. After the Effective Date, but prior to the Commercial Operations Date, Provider may invoice Customer for any charges incurred for equipment, construction, or installation of the System, up to \$100,000. Provider may invoice Customer for an additional \$212,000 for equipment, construction, or installation of the System, as soon as the Commercial Operations Date is achieved.

5.1.2 Post-COD. Following achievement of the Commercial Operation Date, Provider shall invoice Customer for Solar Services Payments on a quarterly basis, in advance, in accordance with the fixed service fee schedule provided on Exhibit B-1, as further broken down by Customer department as shown on Exhibit B-2. Any credit or surcharge associated with the true-up mechanism provided for in Exhibit B-1 shall be applied to Customer's quarterly invoices for the applicable Contract Year. Provider shall deliver each invoice within thirty (30) days of the beginning of each quarterly billing period. All other payment terms, including payment due dates, interest on late payments, and payment dispute provisions shall be governed by Customer's prompt payment policy (see paragraph 4 of Customer's Formal Contract for Services).

### 5.2 [RESERVED]

5.3 Metering of Solar Output. Provider shall provide, install, own, operate and maintain a revenue-grade metering system at the Delivery Point for each Installation that comprises the System. Readings of the meter shall be recorded by Provider on a monthly basis to determine actual output in accordance with the fixed service fee schedule payment mechanism provided for on Exhibit B. In the event that the metering system is out of service or determined to be inaccurate in accordance with section 5.5, below, measurement of the actual output shall be based either on readings of the metering device installed in the DC to AC inverter equipment (if applicable), or an estimation based on historic measurements taken during similar conditions when the metering system was functioning properly, subject to approval of the Operating Committee. Customer shall cooperate with Provider to enable Provider to have reasonable access to the meter as needed to inspect, repair, and maintain such meter. At Provider's option, the metering system may have standard industry telemetry and/or automated meter reading capabilities to allow Provider to read the meter remotely. If Provider elects to install telemetry allowing for remote reading, Customer shall allow for the installation of necessary communication lines and shall reasonably cooperate in providing access for such installation. The meter shall be kept under seal, such seal to be broken only when the meter is to be tested, adjusted, modified, or relocated. In the event that either Party breaks a seal, such Party shall notify the other Party as soon as practicable.

5.4 Internet Availability. Customer will permit Provider, at no cost, the right to connect equipment in order to allow Provider, or its subcontractors, to remotely monitor the

output of each Installation through a dedicated internet portal. Such equipment shall not include video surveillance equipment and shall be installed outside Customer's firewall so as to ensure complete separation between solar service-related links and Customer's networks. Provider shall coordinate establishment of internet portal with Customer's IT department, as directed.

5.5 Meter Verification. From time to time as Provider may, with approval of the Operating Committee, determine, but in any event on each of the fifth, tenth and fifteenth anniversary of the Commercial Operation Date, Provider shall test the meters and provide copies of any related test results to Customer. A qualified independent third party approved by the Operating Committee shall conduct the tests. Provider shall notify Customer seven (7) days in advance of each such test, and shall permit Customer to be present during such tests. If a meter is inaccurate, Provider shall promptly cause the meter to be repaired or replaced.

5.6 Books and Records. To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for the life of this agreement, and Provider shall grant Customer reasonable access to those books, records, and data at the principal place of business of Provider. Customer may examine such books and records relating to transactions under, and administration of, this Agreement, at any time during the period the records are required to be maintained, upon request with reasonable notice and during normal business hours. Nothing in this section is intended to limit the Parties' other rights and obligations with respect to audits and record retention contained in Customer's Formal Contract for Services.

## 6. **OPTION TO PURCHASE SYSTEM.**

6.1 Grant of Purchase Option. Subject to Section 6.5, below, Provider hereby grants to Customer the right and option to purchase all of Provider's right, title, and interest in Provider's share of the System on the terms set forth herein ("Purchase Option"). Customer may exercise the Purchase Option at the end of the following contract years: seven (7), ten (10), fifteen (15), twenty (20) (i.e., on the seventh (7<sup>th</sup>), tenth (10<sup>th</sup>), fifteenth (15<sup>th</sup>) or twentieth (20<sup>th</sup>) anniversary of the Commercial Operation Date), or simultaneously with the termination of this Agreement pursuant to Section 10.2 (either a "Purchase Option Date"), provided it does not precede the seventh (7<sup>th</sup>) anniversary of the Commercial Operation Date and provided that no Customer Event of Default, or any event which with notice or the passage of time will become a Customer Event of Default, has then occurred and is ongoing.

6.2 Determination of Purchase Price. If Customer wishes to exercise the Purchase Option consistent with Section 6.1, it shall deliver an exercise notice to Provider not less than thirty (30) days prior to and not more than ninety (90) days prior to Purchase Option Date (the "Exercise Period"). If Customer elects to exercise its Purchase Option pursuant to Section 10.2, the written notice to Provider under that Section 10.2 must include notice of Customer's intent to exercise its Purchase Option and give at least thirty (30) days' notice prior to exercising the Purchase Option. Any such notice shall be irrevocable once delivered. The Purchase Price for the System shall be the greater of (i) the fair market value as determined by a current third-party appraisal for the System or (ii) the Net Present Value of the System (the "Purchase Price"). An estimate of the buyout options as of the date of this Agreement is provided on Exhibit E.



6.3 Terms and Date of System Purchase. If the Purchase Option is exercised in connection with termination of the Agreement under Section 10.2, the Parties shall consummate the sale of the System, or any portion thereof, to Customer no later than thirty (30) days following Customer's written notice under Section 10.2 that includes the intent to exercise the Purchase Option. If the Purchase Option is exercised pursuant to Section 6.1, the sale of the System to Customer shall be consummated at the end of the Contract Term as described in Section 6.2. On the effective date of such sale (the "Transfer Date") (a) Provider shall surrender and transfer to Customer all of Provider's right, title, and interest in and to the System and shall retain all liabilities, Environmental Attributes, Tax Benefits, and profits arising from or relating to the System that arose prior to the Transfer Date; (b) Customer shall pay the Purchase Price to Provider, and shall assume all liabilities arising from or relating to the System or System as of and after the Transfer Date; (c) Customer shall pay all amounts due under this Agreement for Energy delivered hereunder prior to the Transfer Date; and (d) both the Provider and the Customer shall (i) execute and deliver a bill of sale and assignment of contract rights, together with such other conveyance and transaction documents as are reasonably required to fully transfer and vest title to the System or System in Customer, and (ii) deliver ancillary documents, including releases, resolutions, certificates, third-party consents and approvals, and such similar documents as may be reasonably necessary to complete and conclude the sale of the System or System to Customer. The purchase and sale of each System shall be on an "as-is, where-is" basis, and Provider shall not be required to make any warranties or representations with regard to the System, but Provider shall, to the extent possible, transfer or assign to Customer all manufacturer and third-party warranties with respect to the System or any part thereof. Customer shall pay all transaction and closing costs associated with exercise of the Purchase Option. For clarity, upon successful exercise of the Purchase Option, Customer shall obtain all applicable liabilities, Environmental Attributes, Tax Benefits, and profits associated with the System arising after the Transfer Date.

6.4 End of Term. In the event Customer declines to exercise its Purchase Option with respect to the System, then, at least thirty (30) days before the expiration of the Contract Term, the Parties shall use commercially reasonable efforts to negotiate and document an extension of the Contract Term for the remaining portion of the System. In the event the Parties fail to reach agreement regarding such an extension, then Provider shall, within one hundred eighty (180) days after the date of expiration of the Contract Term, remove any portions of the remaining System from the Premises, as well as to restore and remediate such Premises as may be reasonably required by Customer, provided that Provider shall not be required to remove electrical wiring or infrastructure, or any portion of the System below grade level. Other than as specifically provided otherwise herein, the removal of the System shall be at the cost of Provider.

6.5 Partial Purchase of System. Customer may opt to exercise its Purchase Option for one or more Installations in which case Purchase Price shall be determined in accordance with Section 6.2, above.

## 7. TITLE AND RISK OF LOSS.

7.1 Title. Except as more fully described on Exhibit C, Provider shall at all times retain title to and be the legal and beneficial owner of the System and the System shall remain

the personal property of Provider and shall not attach to or be deemed a part or fixture of any Designated Premises. Provider may file one or more precautionary financing statements in jurisdictions it deems appropriate with respect to each System in order to protect its rights in such System.

7.2 Risk of Loss. Provider shall bear the risk of loss for its portion of the System, except to the extent caused by the breach by Customer of its obligations under this Agreement or the negligence of Customer.

7.3 System Casualty. Upon the total damage, destruction, or loss of any Installation that comprises the System, or, in the reasonable opinion of Provider's or Customer's insurance provider, any substantial portion of the System is determined to have experienced a constructive total loss, Provider shall have the option, subject to consent of the Operating Committee, to repair or replace the Installation or damaged portion of the System, or terminate this Agreement with respect to the portion of the System experiencing the loss. If Provider elects to repair or replace the damaged portions of the System, Provider shall undertake such repair or replacement as quickly as practicable. Provider shall under all circumstances be entitled to all insurance proceeds as they pertain to Provider's portion of the System. If Provider elects to terminate this Agreement with respect to the damaged portion of the System, the termination shall be effective in accordance with the approval of the Operating Committee.

7.4 Financing. The Parties acknowledge that Provider may obtain construction and long-term financing or other credit support from one or more Financing Parties. "Financing Party" means person or persons providing construction or permanent financing to Provider in connection with construction, ownership, operation and maintenance of the System, or if applicable, means any person to whom Provider has transferred the ownership interest in the System, subject to a leaseback of the System from such person. Both Parties agree in good faith to consider and to negotiate changes or additions to this Agreement that may be reasonably requested by the Financing Parties; provided, that such changes do not alter the fundamental economic terms of this Agreement, do not in any way encumber an interest in the Designated Premises, or convey any interest in insurance proceeds contemplated under this Agreement to which Customer may be entitled. In conjunction with any such financing, Customer agrees to execute any consent, estoppel or acknowledgement in form and substance customary for comparable financing transactions and reasonably acceptable to such Financing Parties, including the collateral assignment agreement attached hereto as Exhibit F.

## **8. FORCE MAJEURE.**

8.1 Force Majeure. To the extent either Party is prevented by an event of Force Majeure from performing any obligation under this Agreement (other than an obligation to make payments hereunder as provided herein), such Party shall be excused from the performance of such obligation under this Agreement during the period in which such Force Majeure event prevents performance thereof. In order for the Party experiencing such Force Majeure to get the benefit of Force Majeure, it must give timely notice of the occurrence of such Force Majeure event and the resulting anticipated period of delay to the other Party. The Party claiming Force Majeure shall use commercially reasonable efforts to eliminate or avoid the Force Majeure and resume performing its obligations; provided, however, that neither Party is

required to settle any strikes, lockouts or similar disputes except on terms acceptable to such Party, in its sole discretion. The non-claiming Party shall not be required to perform or resume performance of its obligations to the claiming Party corresponding to the obligations of the claiming Party excused by Force Majeure.

8.2 Notice. In the event of any delay or nonperformance resulting from an event of Force Majeure, the Party suffering the event of Force Majeure shall, as soon as practicable, notify the other Party in writing of the nature, cause, date of commencement thereof and the anticipated extent of any delay or interruption in performance; provided, however, that a Party's failure to give timely notice shall not affect such Party's ability to assert Force Majeure unless the delay in giving notice prejudices the other Party.

8.3 In the event that either Party is unable to perform due to changes in laws, regulations, tariffs mandated or approved by federal, state, governmental or regulatory entities, or court injunction or order ("Legal Requirements"), the Parties agree to negotiate in good faith modifications to the terms of this Agreement in order to comply with such Legal Requirements for the remainder of the term of the Agreement.

## 9. REPRESENTATIONS AND WARRANTIES.

9.1 Representations and Warranties of Customer. Customer represents and warrants to Provider that:

9.1.1 Customer has the requisite capacity and authority to enter into this Agreement and fulfill its obligations hereunder, the execution and delivery by it of this Agreement and the performance by it of its obligations hereunder have been duly authorized by all requisite action by the Common Council, and subject to compliance with and obtaining all required governmental approvals under any applicable laws or regulations governing the sale or delivery of Energy, the entering into of this Agreement and the fulfillment of its obligations hereunder does not contravene any law, statute or contractual obligation of Customer;

9.1.2 Customer has or timely will obtain any and all governmental approvals it requires to enter into this Agreement and fulfill its obligations hereunder;

9.1.3 This Agreement constitutes Customer's legal, valid and binding obligation enforceable against it in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws now or hereafter in effect relating to creditors' rights generally;

9.1.4 No suit, action or arbitration, or legal administrative or other proceeding is pending or has been threatened against the Customer that would have a material adverse effect on the validity or enforceability of this Agreement or the ability of Customer to fulfill its commitments hereunder, or

that could result in any material adverse change in the business or financial condition of Customer; and

9.1.5 No governmental approval (other than any governmental approvals which have been previously obtained) is required in connection with the due authorization, execution and delivery of this Agreement by Customer or the performance by Customer of its obligations hereunder which Customer will be unable to obtain in due course.

9.1.6 Customer represents and warrants to Provider that Customer owns the fee simple interest in the Designated Premises.

9.1.7 Customer represents and warrants to Provider that Customer will own the equipment designated at a later date in accordance with Exhibit C for the duration of this Agreement, which constitutes a significant portion of the System.

9.1.8 Customer will not operate any portion of the System during the term of this Agreement. The construction, installation and operation of the System are the sole responsibility of the Provider during the term of this Agreement.

9.2 Representations and Warranties of Provider. Provider represents and warrants to Customer that:

9.2.1 Provider has the requisite limited liability company capacity to enter into this Agreement and fulfill its obligations hereunder, the execution and delivery by it of this Agreement and the performance by it of its obligations hereunder have been duly authorized by all requisite action of its stockholders, partners or members, and by its board of directors or other governing body, and subject to compliance with and obtaining all required governmental approvals under any applicable regulatory laws or regulations governing the sale or delivery of Energy, the entering into of this Agreement and the fulfillment of its obligations hereunder does not contravene any law, statute or contractual obligation of Provider;

9.2.2 This Agreement constitutes Provider's legal, valid and binding obligation enforceable against it in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws now or hereafter in effect relating to creditors' rights generally;

9.2.3 No suit, action or arbitration, or legal administrative or other proceeding is pending or has been threatened against the Provider that would have a material adverse effect on the validity or enforceability of this Agreement or the ability of Provider to fulfill its commitments hereunder, or



that could result in any material adverse change in the business or financial condition of Provider; and

9.2.4 Neither the System nor any of Provider's services provided to Customer pursuant to this Agreement infringe on any third party's intellectual property or other proprietary rights, and will indemnify Customer in accordance with 14.1 for any such infringement.

9.2.5 Provider shall not have the right to sell or resell any excess Energy to a third party, nor hold itself out generally to the public to provide public utility services.

## 10. DEFAULTS/REMEDIES.

10.1 Provider Event of Default. Each of the following events shall constitute a "Provider Event of Default":

10.1.1 Provider fails to pay to Customer any amount when due under this Agreement and such breach remains uncured for ten (10) Business Days following written notice of such breach to Provider;

10.1.2 (i) Provider commences a voluntary case under any bankruptcy law; (ii) Provider fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against Provider in an involuntary case under any bankruptcy law; or (iii) any involuntary bankruptcy proceeding commenced against Provider remains undismissed or undischarged for a period of one hundred and twenty (120) days; and

10.1.3 Provider materially breaches any other term of this Agreement and (i) if such breach is capable of being cured within thirty (30) days after Customer's notice to Provider of such breach, Provider has failed to cure the breach within such thirty (30) day period, or (ii) if Provider has diligently commenced work to cure such breach during such thirty (30) day period but such breach is not capable of cure within such period, Provider has failed to cure the breach within a further one hundred twenty (120) day period (such aggregate period not to exceed one hundred fifty (150) days from the date of Customer's notice). In either case, if such breach remains uncured for ten (10) Business Days following written notice of such breach to Provider, Provider shall provide Customer with written estimate of the time to cure such breach and a specific plan for curing such breach.

10.2 Customer's Remedies. If a Provider Event of Default has occurred and is continuing, Customer may terminate this Agreement by written notice to Provider following the expiration of the applicable cure period, may exercise any other remedy it may have at law or equity, including recovering from Provider all resulting damages. Customer may also elect the Purchase Option as set forth in Section 6.

10.3 Customer Event of Default. Each of the following events shall constitute a “Customer Event of Default”:

10.3.1 Customer fails to pay to Provider pursuant to the terms of Customer’s prompt payment plan (see paragraph 4 of Customer’s Formal Contract for Services);

10.3.2 (i) Customer commences a voluntary case under any bankruptcy law; (ii) Customer fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against Customer in an involuntary case under any bankruptcy law; or (iii) any involuntary bankruptcy proceeding commenced against Customer remains undismissed or undischarged for a period of one hundred and twenty (120) days;

10.3.3 Customer breaches any of its obligations under Section 2.3.4;

10.3.4 Customer materially breaches any other term of this Agreement and (i) if such breach is capable of being cured within thirty (30) days after Provider’s notice to Customer of such breach, Customer has failed to cure the breach within such thirty (30) day period, or (ii) if Customer has diligently commenced work to cure such breach during such thirty (30) day period but such breach is not capable of cure within such period, Customer has failed to cure the breach within a further one hundred fifty (150) day period (such aggregate period not to exceed one hundred eighty (180) days from the date of Provider’s notice);

10.3.5 Customer ceases to conduct business at the Designated Premises, unless (i) Customer’s business is sold and Customer’s rights, duties and obligations are assigned pursuant to Section 18.1, below; or (ii) Customer’s business is sold and purchaser elects to exercise the Customer’s Purchase Option in Section 6.1, above; and/or

10.3.6 Customer (i) refuses to execute any document required for Provider to obtain any Environmental Attributes or Tax Benefits related to a System, or (ii) causes any material change to the condition of the Designated Premises that has a material adverse effect, as defined in this Agreement on any portion of the System.

10.4 Provider’s Remedies. If a Customer Event of Default under Sections 10.3.1 through 10.3.5 has occurred and is continuing, Provider may terminate this Agreement by written notice to Customer following the expiration of the applicable cure period. If a Customer Event of Default under Sections 10.3.4 or 10.3.5 has occurred and is continuing, Provider may terminate this Agreement with respect to the affected Installation or portion of the System by written notice to Customer following the expiration of the applicable cure period. Provider may also exercise any other remedy it may have at law or equity, including recovering from Customer all resulting damages, which damages shall include, but not be limited to, fixed payments for Energy services for balance of Agreement term, the cost of removing the

Installations from the Designated Premises, or any loss or damages to Provider due to lost or recaptured Tax Benefits, including recapture of the investment tax credit under section 48 of the Internal Revenue Code and accelerated depreciation for the System (including any gross up necessary to make the payments reasonably equivalent to the Tax Benefits recaptured), as well as all other amounts of any nature due under this Agreement.

10.5 Waiver of Consequential Damages. EXCEPT IN THE EVENT OF BODILY INJURY OR PROPERTY DAMAGES, THE PARTIES AGREE THAT TO THE FULLEST EXTENT ALLOWED BY LAW, IN NO EVENT SHALL EITHER PARTY BE RESPONSIBLE OR LIABLE TO THE OTHER, WHETHER IN CONTRACT, TORT, WARRANTY, OR UNDER ANY STATUTE OR ON ANY OTHER BASIS, FOR SPECIAL, INDIRECT, INCIDENTAL, MULTIPLE, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR DAMAGES FOR LOST PROFITS OR LOSS OR INTERRUPTION OF BUSINESS, ARISING OUT OF OR IN CONNECTION WITH THE SYSTEM OR THIS AGREEMENT.

10.6 Non-Waiver of Liability Caps, Defenses and Immunities. No provision of the Agreement is intended, or shall be construed, to be a waiver for any purpose by Customer of the provision of Section 893.80 of the Wisconsin Statutes or amendment thereto or other applicable limits on municipal liability, nor shall any provision be construed to be a waiver of any defense or immunity available to the Customer.

## 11. FINANCING ACCOMMODATIONS.

11.1 Customer Acknowledgment. Customer acknowledges that Provider may finance the System and that Provider's obligations may be secured by, among other collateral, a pledge or collateral assignment of this Agreement and a security interest in Provider's portion of the System. In order to facilitate such financing, and with respect to any financing provider of which Provider has notified Customer in writing (each, a "Financing Party"), Customer agrees as follows:

11.1.1 Consent to Collateral Assignment. Provider shall have the right to assign this Agreement as collateral for financing or refinancing of the System, and Customer hereby consents to the collateral assignment by Provider to any Financing Party of Provider's right, title, and interest in and to this Agreement. Such assignment shall not affect Customer's ownership rights as they pertain to its portion of the System or any of the rights or benefits to which Customer is entitled under this Agreement.

11.1.2 Financing Party's Rights Following Default. Notwithstanding any contrary term of this Agreement:

(a) Financing Party, as collateral assignee, shall be entitled to exercise, in the place and stead of Provider, any and all rights and remedies of Provider under this Agreement in accordance with the terms of this Agreement. Financing Party shall also be entitled to exercise all rights and remedies of secured parties generally with respect to this

Agreement and the System, to the extent they do not conflict with Customer's rights and benefits under this Agreement.

(b) Financing Party shall have the right, but not the obligation, to pay all sums due under this Agreement and to perform any other act, duty, or obligation required of Provider hereunder or cause to be cured any default or event of default of Provider in the time and manner provided by the terms of this Agreement. Nothing herein requires Financing Party to cure any default of Provider (unless Financing Party has succeeded to Provider's interests) to perform any act, duty, or obligation of Provider, but Customer hereby gives Financing Party the option to do so.

(c) Upon the exercise of remedies under its security interest in the System, including any sale thereof by Financing Party, whether by judicial proceeding or under any power of sale, or any conveyance from Provider to Financing Party, Financing Party shall give notice to Customer of the transferee or assignee of this Agreement. Any such exercise of remedies shall not constitute a Provider Event of Default.

(d) Upon any rejection or other termination of this Agreement pursuant to any process undertaken with respect to Provider under the United States Bankruptcy Code, at the request of Financing Party made within ninety (90) days of such termination or rejection, Customer shall enter into a new solar services agreement with Financing Party or its assignee on substantially the same terms as this Agreement, including Customer's status as a co-owner of the System.

11.1.3 Financing Party Cure Rights. Customer shall not exercise any right to terminate or suspend this Agreement unless Customer has given prior written notice to each Financing Party of which Customer has notice. Customer's notice of intent to terminate or suspend must specify the condition giving rise to such right. Financing Party shall have the longer of thirty (30) days and the cure period allowed for a default of that type under this Agreement to cure the condition; provided that if the condition cannot be cured within such time but can be cured within the extended period, Financing Party may have up to an additional ninety (90) days to cure if Financing Party commences to cure the condition within the thirty (30) day period and diligently pursues the cure thereafter (such aggregate period not to exceed one hundred twenty (120) days from the date of Customer's notice). Customer's and Provider's obligations under this Agreement shall otherwise remain in effect, and Customer and Provider shall be required to fully perform all of their respective obligations under this Agreement during any cure period.

11.1.4 Continuation Following Cure. If Financing Party or its assignee acquires title to or control of Provider's assets and cures all defaults existing as of the date of such change in title or control within the time allowed by Section 10.1.3, then this Agreement shall continue in full force and effect.



11.2 Notice of Defaults and Events of Default. Customer agrees to deliver to each Financing Party a copy of all notices that Customer delivers to Provider pursuant to this Agreement.

**12. NOTICES.** Any notice required, permitted, or contemplated hereunder shall be in writing and addressed to the Party to be notified at the address set forth below or at such other address or addresses as a Party may designate for itself from time to time by notice hereunder. Such notices may be sent by personal delivery or recognized overnight courier, and shall be deemed effective upon receipt.

To Provider: Eagle Point Energy – 6 LLC  
900 Jackson St., Suite 108  
Dubuque, IA 52001  
Attention: Barry Shear

With copies to: BluePath Finance LLC  
220 Halleck Street  
Suite G150  
San Francisco, CA 94129

Richard A. Heinemann, Esq.  
Boardman & Clark LLP  
1 S. Pinckney Street  
Suite 410  
Madison, WI 53701-0927

To Customer: City of Milwaukee  
Environmental Collaboration Office  
Attn: Erick Shambarger  
200 E Wells Street, Room 603  
Milwaukee, WI 53202

With a copy to: City of Milwaukee  
DOA – Purchasing Division  
200 E Wells Street, Room 601  
Milwaukee, WI 53202

### **13. GOVERNING LAW; DISPUTES.**

13.1 Choice of Law. This Agreement shall be construed in accordance with the laws of the State of Wisconsin, without regard to its conflict of laws principles.

13.2 Disputes.

13.2.1 Management Negotiations. The Parties shall use all reasonable efforts to settle disputes through negotiation between authorized members of each Party's senior management. Either Party may, by written notice to the other Party, request a meeting to initiate negotiations to be held within fifteen (15) Business Days of the other Party's receipt of such request, at a mutually agreed time and place. If the matter is not resolved within thirty (30) Business Days of their first meeting, either Party may pursue arbitration in accordance with Section 13.2.2., it being understood that either Party may decline a request for arbitration and instead exercise any other remedy at law or in equity.

13.2.2 Arbitration. Any controversy or dispute not amicably resolved by the Parties or through management negotiations may be settled by binding arbitration. Either Party may initiate arbitration by giving written notice to the other Party. The notice shall state the nature of the claim or dispute, the amount involved, if any, and the remedy sought. The dispute shall be submitted to an independent arbitrator mutually selected by the Parties. If the dispute has a value in excess of \$100,000.00, then at the election of either Party, there shall be a panel of three (3) arbitrators. If the Parties do not mutually agree on the arbitrator(s), the Parties shall then utilize the American Arbitration Association (or another entity mutually acceptable to the Parties) to provide the required independent arbitrator(s). The decision of the appointed independent arbitrator(s) shall be final and binding on the Parties. In rendering a decision, the arbitrator(s) shall comply with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect. Any such arbitration shall be conducted in Milwaukee County, Wisconsin.

#### 14. INDEMNIFICATION.

14.1 Provider's Indemnity to Customer. Provider shall indemnify, defend, and hold harmless Customer (including Customer's permitted successors and assigns) and Customer's subsidiaries, directors, officers, members, shareholders, employees and agents (collectively, "Customer Indemnified Parties") from and against any and all damages, including any and all damages sustained or incurred by any third party Person, for personal injury, illness, death or property damage, to the extent caused by the negligence (including gross negligence) or willful misconduct of Provider, (including for purposes of this 14.1, its contractors, subcontractors, subsidiaries, directors, officers, members, shareholders, employees, and agents), arising out of or in connection with this Agreement. Provider's indemnification obligations under this Section 14.1 shall not extend to any claim to the extent such claims is due to the gross negligence or willful misconduct of any Customer Indemnified Party.

14.2 Customer's Indemnity to Provider. Customer shall indemnify, defend, and hold harmless Provider (including Provider's permitted successors and assigns) and Provider's subsidiaries, directors, officers, members, shareholders, employees and agents (collectively, "Provider Indemnified Parties") from and against any and all damages sustained or incurred by any third party Person for personal injury, illness, death or property damage, to the extent

caused by the negligence of the Customer or one of its employees or officers acting within the scope of their employment or agency pursuant to sections 895.46(1) and 893.80 Wisconsin Statutes arising out of or in connection with this Agreement. Customer's indemnification obligations under this Section 14.2 shall not extend to any claim to the extent such claims is due to acts or omissions of any Provider Indemnified Party.

## 15. INSURANCE.

15.1 Insurance Required. For its portion of the System, Provider shall, at its own cost and expense, maintain in full force and effect throughout the Contract Term, with insurers of recognized responsibility authorized to do business in Wisconsin, assigned an A. M. Best rating of no less than an IX, insurance coverage in the amounts and types set forth below. Each policy of insurance maintained by Provider shall (a) name Customer as loss payee (to the extent of covering risk of loss or damage to the Designated Premises or the System) and as an additional named insured as its interests may appear (to the extent covering any other risk); and (b) contain endorsements providing that such policy shall not be cancelled or amended with respect to the named insured and its designees without thirty (30) days' prior written notice to Customer. Provider shall furnish current certificates of insurance to Customer evidencing the insurance required hereunder. In addition, throughout the Contract Term, during the period when Provider is utilizing contractors to install, construct, operate, or maintain the System or any part thereof, the Provider shall cause the liability policies required under this section to cover the work at all tiers contemplated under this Agreement, or shall require said contractors and subcontractors to obtain their own liability policies covering the work contemplated under this Agreement. Should Provider require their contractor/subcontractors to obtain such liability policies, they shall be subject to the same terms and coverages, including naming Customer as an additional insured, as are required of Provider under 15.1, 15.2, and 15.4, (excluding 15.4(iv)).

15.2 Waiver of Subrogation. Each policy of insurance required to be procured by Provider hereunder shall provide for a waiver of subrogation rights against Customer, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of that policy.

15.3 No Waiver of Obligations. The provisions of this Agreement shall not be construed in a manner so as to relieve any insurer of its obligations to pay any insurance proceeds in accordance with the terms and conditions of valid and collectable insurance policies. The liabilities of the Parties to one another shall not be limited by insurance.

15.4 Provider Insurance Requirements. For the Term of this Agreement Provider shall have the following types of insurance coverage:

- (i) Workers' compensation insurance, with limits of liability at least equal to the statutory requirements therefor;
- (ii) Employer's liability insurance of not less than one million dollars (\$1,000,000);

(iii) Comprehensive general liability insurance against liability for injury to or death of any Person or damage to property in connection with the use, operation or condition of the System of not less than two million dollars (\$2,000,000) combined single limit per occurrence and not less than four million dollars (\$4,000,000) annual aggregate. For any Installation less than 200 kW ac, these coverages may be \$1,000,000 combined single limit per occurrence, \$2,000,000 in the aggregate.

(iv) Replacement cost property insurance against systems loss, with limits not less than the installed cost of the System.

(v) Provider may satisfy the insurance requirements contained in this Agreement though any combination of primary and/or excess coverage.

15.5 Customer Insurance Requirements. For its portion of the System, Customer is self-insured for purposes of liability, and will provide a letter describing to Provider its self-insurance program. Customer may either self-insure or obtain property insurance coverage on its portion of the System.

**16. CONFIDENTIAL INFORMATION.** All documents associated with this Agreement shall become public documents and subject to Wis. Stat. secs. 19.31-19.39, as may be amended, which is otherwise known as the "Wisconsin Public Records Law". By submitting any document to Customer in connection with this Agreement, Provider recognizes this and waives any claim against Customer and any of its officers and employees relating to the release of any document or information submitted. Provider shall hold Customer and its officers and employees harmless from any claims arising from the release of any document or information made available to Customer. Nothing in this section is intended to limit the Parties rights and obligations pursuant to the Wisconsin Public Records Law (see paragraph 22 of Customer's Formal Contract for Services).

**17. OPERATING COMMITTEE.** The System shall be operated under the direction of an Operating Committee. However, meetings of the Committee are not required for operations to be conducted, provided that operations of the System are consistent with the terms of this Agreement. The Operating Committee shall be comprised of two representatives of the Provider and one representative of the Customer. At a minimum, the Committee shall meet at least once annually at a time and place selected by Provider and approved by Customer. The presence of all three members of the Operating Committee shall constitute a quorum. A representative of either the Customer or the Provider may call special meetings of the Committee by giving at least ten (10) days advance written notice to the other Operating Committee members. All meetings of the Operating Committee may be held telephonically, unless otherwise requested by a Party.

**18. MISCELLANEOUS.**

18.1 Assignments. Neither Party shall have the right to assign any of its rights, duties, or obligations under this Agreement without the prior written consent of the other Party, which consent may not be unreasonably withheld or delayed. The foregoing notwithstanding, Provider may assign any of its rights, duties, or obligations under this Agreement, without the consent of Customer, (i) to any of its Affiliates, (ii) to any third party in connection with a financing transaction, or (iii) to any purchaser of any Provider or of substantially all of Provider's assets.

18.2 Entire Agreement. This Agreement, Customer's Formal Contract for Services, along with all of the other documents referenced in Customer's Formal Contract for Services in the order of precedence indicated therein, represent the full and complete agreement between the Parties hereto with respect to the subject matter contained herein and supersedes all prior written or oral agreements between the Parties with respect to the subject matter hereof.

18.3 Amendments. This Agreement may only be amended, modified, or supplemented by an instrument in writing executed by duly authorized representatives of Provider and Customer.

18.4 No Partnership or Joint Venture. Provider and Provider's agents, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of Customer. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement).

18.5 Headings; Exhibits. The headings in this Agreement are solely for convenience and ease of reference and shall have no effect in interpreting the meaning of any provision of this Agreement. Any Exhibits referenced within and attached to this Agreement, including any attachments to the Exhibits, shall be a part of this Agreement and are incorporated by reference herein.

18.6 Remedies Cumulative; Attorneys' Fees. No remedy herein conferred upon or reserved to any Party shall exclude any other remedy herein or by law provided, but each shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

18.7 Waiver. The waiver by either Party of any breach of any term, condition, or provision herein contained shall not be deemed to be a waiver of such term, condition, or provision, or any subsequent breach of the same, or any other term, condition, or provision contained herein. Any such waiver must be in a writing executed by the Party making such waiver.

18.8 Severability. If any part, term, or provisions of this Agreement is determined by an arbitrator or court of competent jurisdiction to be invalid, illegal, or unenforceable, such determination shall not affect or impair the validity, legality, or enforceability of any other part, term, or provision of this Agreement and shall not render this Agreement unenforceable as a whole. Instead, the part of the Agreement found to be invalid, unenforceable, or illegal shall be amended, modified, or interpreted to the extent possible to most closely achieve the intent of the Parties and in the manner closest to the stricken provision.



18.9 No Public Utility. Nothing contained in this Agreement shall be construed as an intent by Provider to dedicate the System to public use or subject itself to regulation as a “public utility” or as an “electric utility” (as such term may be defined under any applicable law).

18.10 Service Contract. The Parties acknowledge and agree that, for accounting and tax purposes, this Agreement is not and shall not be construed as a capital lease financing contract and, pursuant to Section 7701(e)(3) of the Internal Revenue Code, this Agreement is and shall be deemed to be a service contract for the sale to Customer of energy produced at an alternative energy facility.

18.11 Counterparts and Facsimile Signatures. This Agreement may be executed in counterparts, which shall together constitute one and the same agreement. Facsimile or portable document format (“.PDF”) signatures shall have the same effect as original signatures, and each Party consents to the admission in evidence of a facsimile or photocopy of this Agreement in any court or arbitration proceedings between the Parties.

18.12 Further Assurances.

18.12.1 Additional Documents. Upon the receipt of a written request from the other Party, each Party shall execute such additional documents, instruments, and assurances and take such additional actions as are reasonably necessary and desirable to carry out the terms and intent hereof. Neither Party shall unreasonably withhold, condition, or delay its compliance with any reasonable request made pursuant to this section.

18.12.2 Certificates. From time to time, Customer shall provide within five (5) Business Days after receipt of a written request from Provider (i) a lien waiver from any party purporting to have a lien, security interest, or other encumbrance on the Designated Premises, confirming that it has no interest in the System other than herein described, (it being understood that under Wisconsin law, no party may place a Lien upon the real property owned by a Wisconsin municipal corporation, (see section 779.15 Wisconsin Statutes, and section 7-32 Milwaukee Code of Ordinances), or (ii) an estoppel certificate attesting, to the knowledge of Customer, of Provider’s compliance with the terms of this Agreement or detailing any known issues of noncompliance, and making such other representations, warranties, and accommodations reasonably requested by the recipient of the estoppel certificate.

IN WITNESS WHEREOF, the Parties have caused this Solar Energy Services Agreement to be duly executed and delivered as of the Effective Date.

**EAGLE POINT ENERGY- 6, LLC**  
**PROVIDER**

**CITY OF MILWAUKEE WISCONSIN**  
**CUSTOMER**

By: 

Name: Barry Shear

Title: Member Manager

By: 

Name: Rhonda Kelsey

Title: Purchasing Director

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**EXHIBIT A****DEFINITIONS**

“Affiliate” means, with respect to any person or entity, any other person or entity controlling, controlled by or under common control with such first person or entity. For purposes of this definition and this Agreement, the term “control” (and correlative terms) means the right and power, directly or indirectly through one or more intermediaries, to direct or cause the direction of substantially all of the management and policies of a person or entity through ownership of voting securities or by contract, including, but not limited to, the right to fifty percent (50%) or more of the capital or profits of a partnership or, alternatively, ownership of fifty percent (50%) or more of the voting stock of a corporation.

“Agreement” has the meaning set forth in the Preamble.

“Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday.

“Commercial Operation Date” means the date when all Installations that comprise the System listed in Exhibit B are commissioned in accordance with the applicable distributed generation interconnection agreement with the interconnecting public utility.

“Confidential Information” has the meaning set forth in Section 16.

“Contract Term” has the meaning set forth in Section 2.2.

“Contract Year” means the twelve (12) month period commencing on the Commercial Operation Date, and each consecutive twelve (12) month period thereafter during the Delivery Term.

“Customer” has the meaning set forth in the Preamble.

“Customer Event of Default” has the meaning set forth in Section 10.3.

“Customer Indemnified Parties” has the meaning set forth in Section 14.1.

“Delivery Point” means the point of interconnection between an Installation that comprises the System and the internal electrical system of the Installation at the applicable Designated Premise.

“Delivery Term” has the meaning set forth in Section 2.2.

“Designated Premises” means all the real property and improvements (exclusive of any System) as described in Exhibit D.

“Effective Date” has the meaning set forth in the Preamble.

“Energy” means electrical energy that is generated by any System, expressed in kWh. This excludes electrical demand, as expressed in kW.

“Environmental Attributes” means any and all environmental benefits, air quality credits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to energy generation by a renewable fuel source and its displacement of energy generation by conventional, nonrenewable, and/or carbon-based fuel sources. Environmental Attributes include, but are not limited to, (1) any benefit accruing from the renewable nature of the generation’s motive source; (2) any avoided emissions of pollutants to the air, soil, or water (such as sulfur oxides (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO), and other pollutants other than those that are regulated pursuant to state or federal law); (3) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), and other greenhouse gases that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; (4) any property rights that may exist with respect to the foregoing attributes howsoever entitled; (5) any green tags, renewable energy credits or similar credits, including RECs created pursuant to applicable law (“RECs”); and (6) any reporting rights to these avoided emissions, including, but not limited to, green tag or REC reporting rights. Environmental Attributes do not include (i) any energy, capacity, reliability, or other power attributes, (ii) Tax Benefits, or (iii) emission reduction credits encumbered or used for compliance with local, state, or federal operating and/or air quality permits.

“Exercise Period” has the meaning set forth in Section 6.2.

“Financing Party” has the meaning set forth in Section 7.4

“Force Majeure” means any act or event that delays or prevents a Party from timely performing obligations under this Agreement or from complying with conditions required under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by, and is beyond the reasonable control of and without the fault or negligence of, the Party relying thereon as justification for such delay, nonperformance, or noncompliance, which includes, without limitation, an act of God or the elements, site conditions, extreme or severe weather conditions, explosion, fire, epidemic, landslide, mudslide, sabotage, terrorism, lightning, earthquake, flood, volcanic eruption or similar cataclysmic event, an act of public enemy, war, blockade, civil insurrection, riot, civil disturbance, or strike or other labor difficulty caused or suffered by a Party or any third party beyond the reasonable control of such Party. However, financial cost alone or as the principal factor shall not constitute grounds for a claim of Force Majeure.

“Governmental Authorities” means any national, state, regional, municipal or local government, any political subdivision thereof, or any governmental, quasi-governmental, regulatory, judicial or administrative agency, authority, commission, board or similar entity having jurisdiction over the System or its operations, the Designated Premises, or otherwise over any Party.

“Installation” has the meaning set forth in the Recitals.

“Insurance Payment” has the meaning set forth in Section 15.5.

“kWh” means kilowatt-hours.

“Legal Requirements” has the meaning set forth in Section 8.3.

“Lien” has the meaning set forth in Section 4.2.

“Net Present Value” means a lump sum equal to the projected future cash flow of the Agreement based on the System’s average energy production for the previous three (3) years degraded at 0.50% annually for the remaining term of the Agreement discounted at a rate of 6.5%. See Exhibit E for estimated Net Present Value buy-out amounts.

“Operating Committee” has the meaning set forth in Article 17.

“Owner” has the meaning set forth in the Recitals.

“Party” and “Parties” have the meanings set forth in the Preamble.

“Person” means any individual, corporation (including, without limitation, any non-stock or non-profit corporation), limited liability company, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, or governmental body.

“Provider” has the meaning set forth in the Preamble.

“Provider Event of Default” has the meaning set forth in Section 10.1.

“Provider Indemnified Parties” has the meaning set forth in Section 14.2.

“Prudent Operating Practice” means the practices, methods, and standards of professional care, skill, and diligence engaged in or approved by a significant portion of the electric power industry for solar energy facilities of similar size, type, and design as the System that, in the exercise of reasonable judgment, in light of the facts known at the time, would have been expected to accomplish results consistent with applicable law, reliability, safety, environmental protection, applicable codes, and standards of economy and expedition, including any applicable legal requirements for similar projects if undertaken by Customer’s Department of Public Works.

“Purchase Option” has the meaning set forth in Section 6.1.

“Purchase Option Date” has the meaning set forth in Section 6.1.

“Purchase Price” means the Fair Market Value (or “FMV”) as defined to mean the greater of: (i) the amount that would be paid for the equipment compromising the System in an arm’s length, free market transaction, for cash, between an informed,

willing seller and an informed willing buyer, neither of whom is under compulsion to complete the transaction, taking into account, among other things, the age, condition and performance of such equipment and advanced is solar technology, and (ii) the amount set forth on Exhibit E attached hereto for the respective Purchase Option Year.

“RECIP” has the meaning set forth in the Recitals.

“Solar Services Payment” has the meaning set forth in Section 5.1.1.

“System” means the solar energy generation system described in Exhibit C, including metering equipment, and located at one of the Designated Premises described in Exhibit D.

“System Operation Date” means the date when an individual System is “placed in service” for purposes of Section 48 of the Internal Revenue Code.

“Tax Benefits” means any and all new or existing federal, state or local tax credits, cash grants, production incentives or similar tax or cash benefits, other than grants associated with the RECIP program, for which the System, or the owner or operator thereof, is eligible or which it receives, or any depreciation, expenses, credits, benefits or other federal, state or local tax treatment for which the System, or the owner or operator thereof, is eligible or which it receives.

“Temporary Shutdown” means a partial or complete shutdown of a System or discontinuance of, or reduction in, energy delivered from a System at the written direction of Buyer to Provider that lasts longer than 24 hours.

“Transfer Date” has the meaning set forth in Section 6.2.

“Utility” means the Customer’s electrical utility company.

## EXHIBIT B - 1

## Schedule of Service Agreement Payments

Contract Year	Combined Projected Output	Milwaukee Owned Projected Output	EPE-6 Owned Projected Output	Annual Payment Amount	Quarterly Payment Amount
1	1,372,000	225,000	1,147,000	109,000	27,250
2	1,365,000	224,000	1,141,000	111,000	27,750
3	1,358,000	223,000	1,135,000	113,000	28,250
4	1,351,000	221,000	1,130,000	115,000	28,750
5	1,344,000	220,000	1,124,000	118,000	29,500
6	1,338,000	220,000	1,118,000	120,000	30,000
7	1,331,000	218,000	1,113,000	122,000	30,500
8	1,324,000	217,000	1,107,000	125,000	31,250
9	1,318,000	216,000	1,102,000	127,000	31,750
10	1,311,000	215,000	1,096,000	130,000	32,500
11	1,305,000	214,000	1,091,000	132,000	33,000
12	1,298,000	213,000	1,085,000	135,000	33,750
13	1,292,000	212,000	1,080,000	138,000	34,500
14	1,285,000	211,000	1,074,000	140,000	35,000
15	1,279,000	210,000	1,069,000	143,000	35,750
16	1,272,000	208,000	1,064,000	146,000	36,500
17	1,266,000	208,000	1,058,000	149,000	37,250
18	1,260,000	207,000	1,053,000	152,000	38,000
19	1,253,000	205,000	1,048,000	155,000	38,750
20	1,247,000	205,000	1,042,000	158,000	39,500
21	1,241,000	204,000	1,037,000	161,000	40,250
22	1,235,000	203,000	1,032,000	164,000	41,000
23	1,228,000	201,000	1,027,000	168,000	42,000
24	1,222,000	200,000	1,022,000	171,000	42,750
25	1,216,000	199,000	1,017,000	174,000	43,500

Annual payment amounts shall be subject to the following annual true-up adjustment based on annual output. Within 30 days of the beginning of a Contract Year, Seller shall calculate the actual output for the previous contract year.

If the actual capacity factor is within +/- 2% of the projected output (reduced for offline days caused by Purchaser), there shall be no adjustment. If the actual output is less than 98%, purchaser shall be provided a credit. If the actual output is above 102%, purchaser shall incur a surcharge.

## EXHIBIT B - 2

## Schedule of Service Agreement Payments By Department

Contract Year	Annual Payment Amount	Annual Library Department	Owned Police Department	Public Service Department	Library Quarterly Payment Amount	Police Quarterly Payment Amount	Pub. Svc. Quarterly Payment Amount
1	109,000	21,170	12,013	75,817	5,292	3,003	18,954
2	111,000	21,558	12,233	77,208	5,390	3,058	19,302
3	113,000	21,947	12,454	78,600	5,487	3,113	19,650
4	115,000	22,335	12,674	79,991	5,584	3,169	19,998
5	118,000	22,918	13,005	82,077	5,729	3,251	20,519
6	120,000	23,306	13,225	83,469	5,827	3,306	20,867
7	122,000	23,695	13,446	84,860	5,924	3,361	21,215
8	125,000	24,277	13,776	86,946	6,069	3,444	21,737
9	127,000	24,666	13,997	88,337	6,166	3,499	22,084
10	130,000	25,248	14,327	90,424	6,312	3,582	22,606
11	132,000	25,637	14,548	91,815	6,409	3,637	22,954
12	135,000	26,219	14,879	93,902	6,555	3,720	23,476
13	138,000	26,802	15,209	95,989	6,701	3,802	23,997
14	140,000	27,191	15,430	97,380	6,798	3,857	24,345
15	143,000	27,773	15,760	99,467	6,943	3,940	24,867
16	146,000	28,356	16,091	101,553	7,089	4,023	25,388
17	149,000	28,938	16,421	103,640	7,235	4,105	25,910
18	152,000	29,521	16,752	105,727	7,380	4,188	26,432
19	155,000	30,104	17,083	107,813	7,526	4,271	26,953
20	158,000	30,686	17,413	109,900	7,672	4,353	27,475
21	161,000	31,269	17,744	111,987	7,817	4,436	27,997
22	164,000	31,852	18,075	114,074	7,963	4,519	28,518
23	168,000	32,629	18,515	116,856	8,157	4,629	29,214
24	171,000	33,211	18,846	118,943	8,303	4,712	29,736
25	174,000	33,794	19,177	121,029	8,448	4,794	30,257

**EXHIBIT C**

**DESCRIPTION OF SYSTEM (including portion of System owned by Customer, which shall be described in terms of specific equipment items and related warranties that shall be owned separately by Customer, but otherwise deemed a part of the System for purposes of the System's operations and maintenance.)**

## City of Milwaukee

### Equipment List & Sizes 8/30/18 – Rev 4.0

Center St. Library – 54.28 kW DC – 68,067 kWh

- (184) S-Energy SN295M-10 Modules
- (46) AP Systems YC1000-3 208V Micros

Central Library – 115.3 kW DC – 144,636 kWh

- (391) S-Energy SN295M-10 Modules
- (99) AP Systems YC1000-3 480V Micros

Central Repair Garage – 392.9 kW DC – 493,528 kWh

- (1332) S-Energy SN295M-10 Modules
- (333) AP Systems YC1000-3 480V Micros

DPW Field HQ **ORIGINAL** Meter – 160.5 kW DC – 200,600 kWh

- (544) S-Energy SN295M-10 Modules
- (136) AP Systems YC1000-3 480V Micros

DPW Field HQ **NEW** Meter – 202.9 kW DC – 253,700 kWh

- (688) S-Energy SN295M-10 Modules
- (172) AP Systems YC1000-3 480V Micros

Police District 3 – 120.3 kW DC – 151,167 kWh

- (408) S-Energy SN295M-10 Modules
- (102) AP Systems YC1000-3 480V Micros

Tippecanoe Library – 39.8 kW DC – 50,745 kWh

- (135) S-Energy SN295M-10 Modules
- (34) AP Systems YC1000-3 208V Micros

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## EXHIBIT C (Continued)

Customer shall own a portion of the System and shall be allocated specific modules, inverters and racking to comport with the RECIP Focus Grant requirements prior to installation.

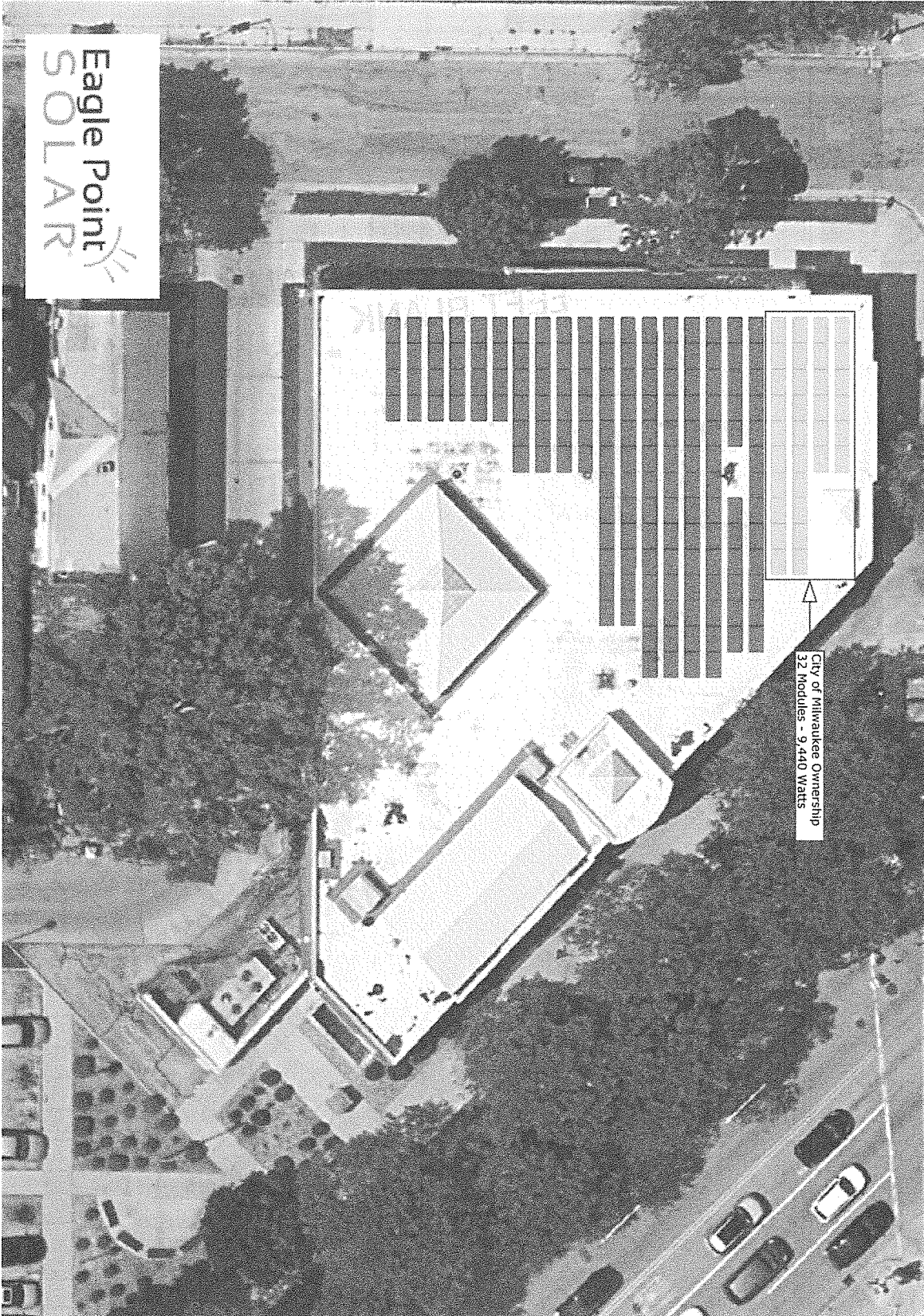
Customer-owned equipment will be allocated on the following basis at a cost of \$1.75 per watt.

	Total Array Size	City of Milwaukee Ownership (Watts)	EPE - 6 Ownership
Center Street Library	54,280	8,906	45,374
Central Library	115,340	18,925	96,415
Central Repair Garage	392,940	64,473	328,467
DPW Field HQ	363,440	59,633	303,807
Police District 3	120,360	19,748	100,612
Tippecanoe Library	39,820	6,534	33,286
Totals	1,086,180	178,218	907,962
Selling Price Per Watt	\$ 1.75		
Selling Price - Milwaukee Owned	\$ 311,882		

It is understood that if any site is found to be unsuitable for solar, the Provider and Customer will work together to identify an alternative location and make appropriate adjustments to preserve the commercial intent of this agreement.

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Eagle Point  
SOLAR

**Eagle Point Solar**  
900 Jackson Street  
Suite 108  
Dubuque, Iowa 52001  
563-582-4044

**PROJECT**  
Center St. Library

REV	DESCRIPTION	DATE
1	Interconnection plot plan and one line started	1

**DESCRIPTION**  
Sheet Description

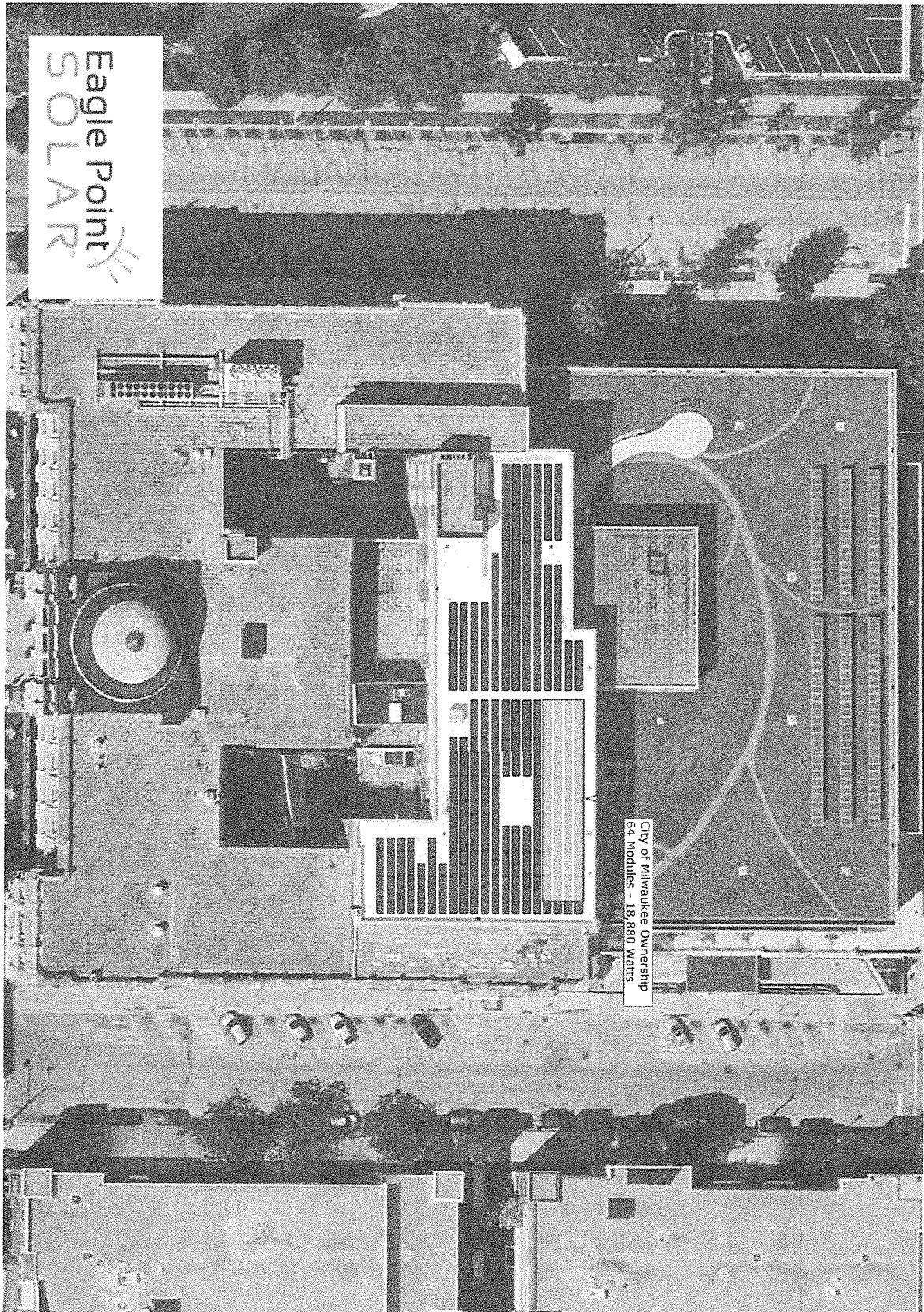
**EDITION DATE**  
August 31, 2018

**AO.1** **REVISION**  
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**Eagle Point**  
**SOLAR**

**Eagle Point Solar**  
900 Jackson Street  
Suite 108  
Dubuque, Iowa 52001  
563-582-4044

**PROJECT**  
Central Library

REV	DESCRIPTION	DATE
1	Interconnection plot plan and one line started	1

**DESCRIPTION**  
Sheet Description

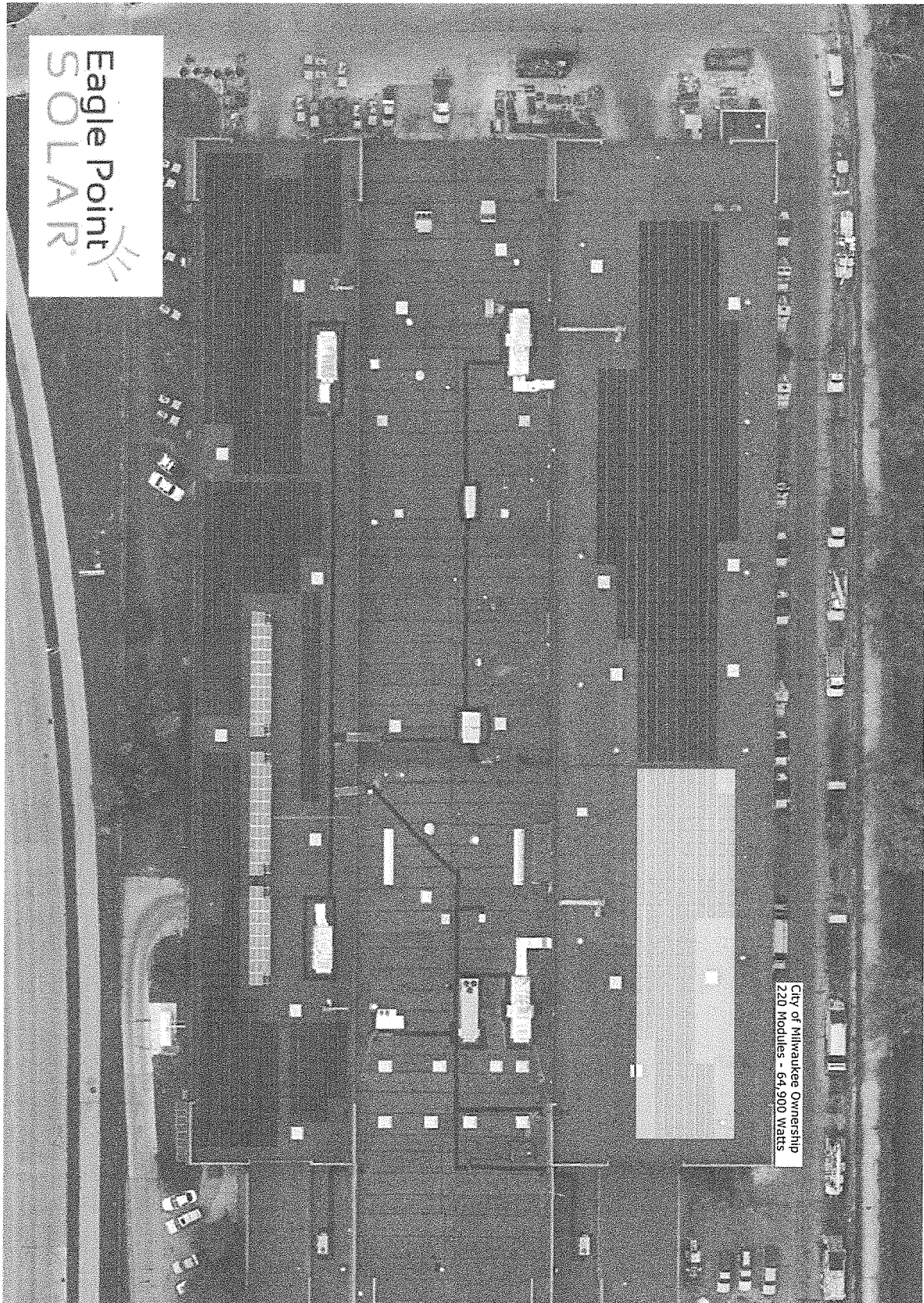
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Eagle Point  
SOLAR

**Eagle Point Solar**  
900 Jackson Street  
Suite 108  
Dubuque, Iowa 52001  
563-582-4044

**PROJECT**  
Central Repair Garage

DATE	DESCRIPTION	REV
1	Interconnection plot plan and one line started	1

**DESCRIPTION**  
Sheet Description

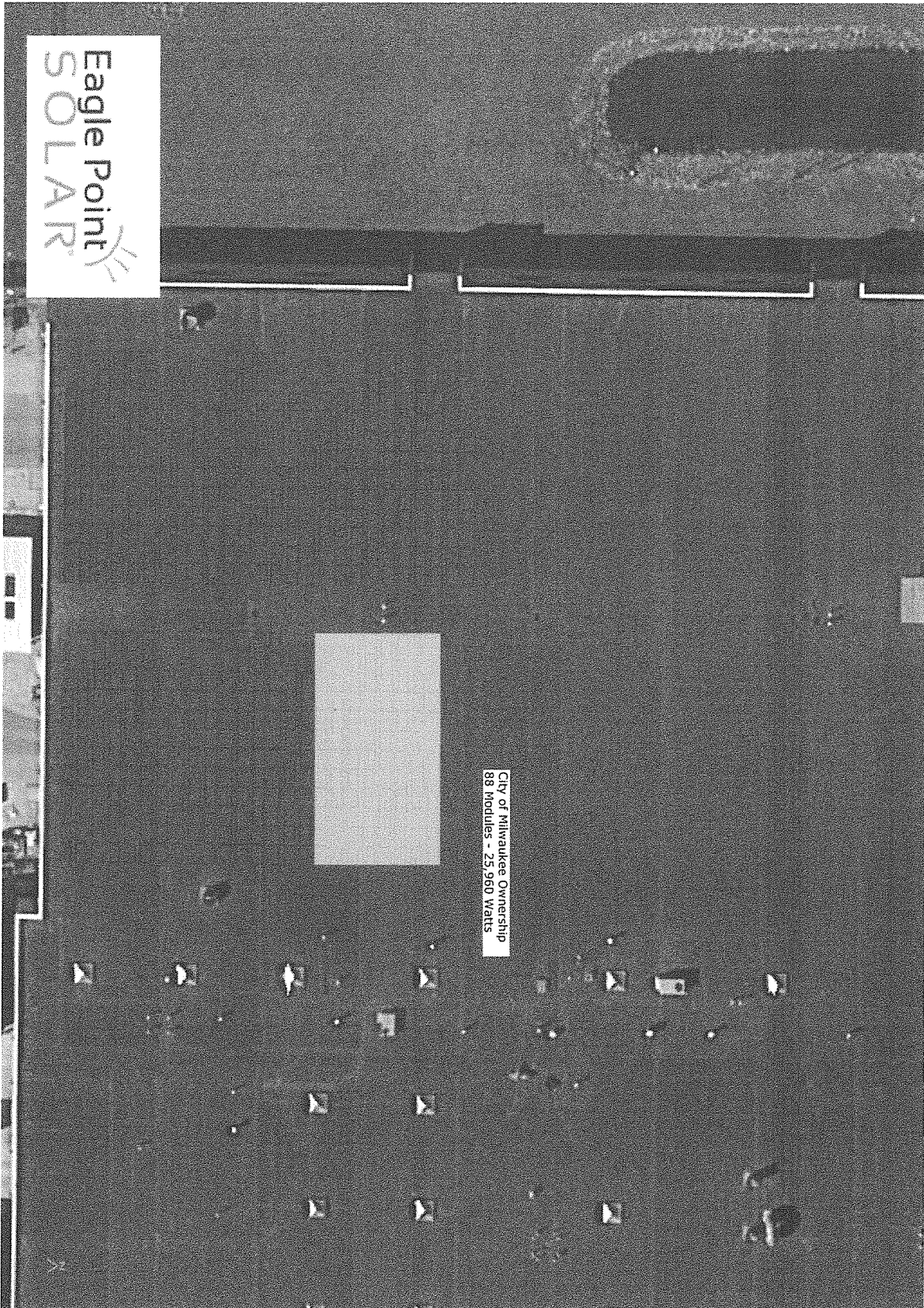
**EDITION DATE**  
August 31, 2018

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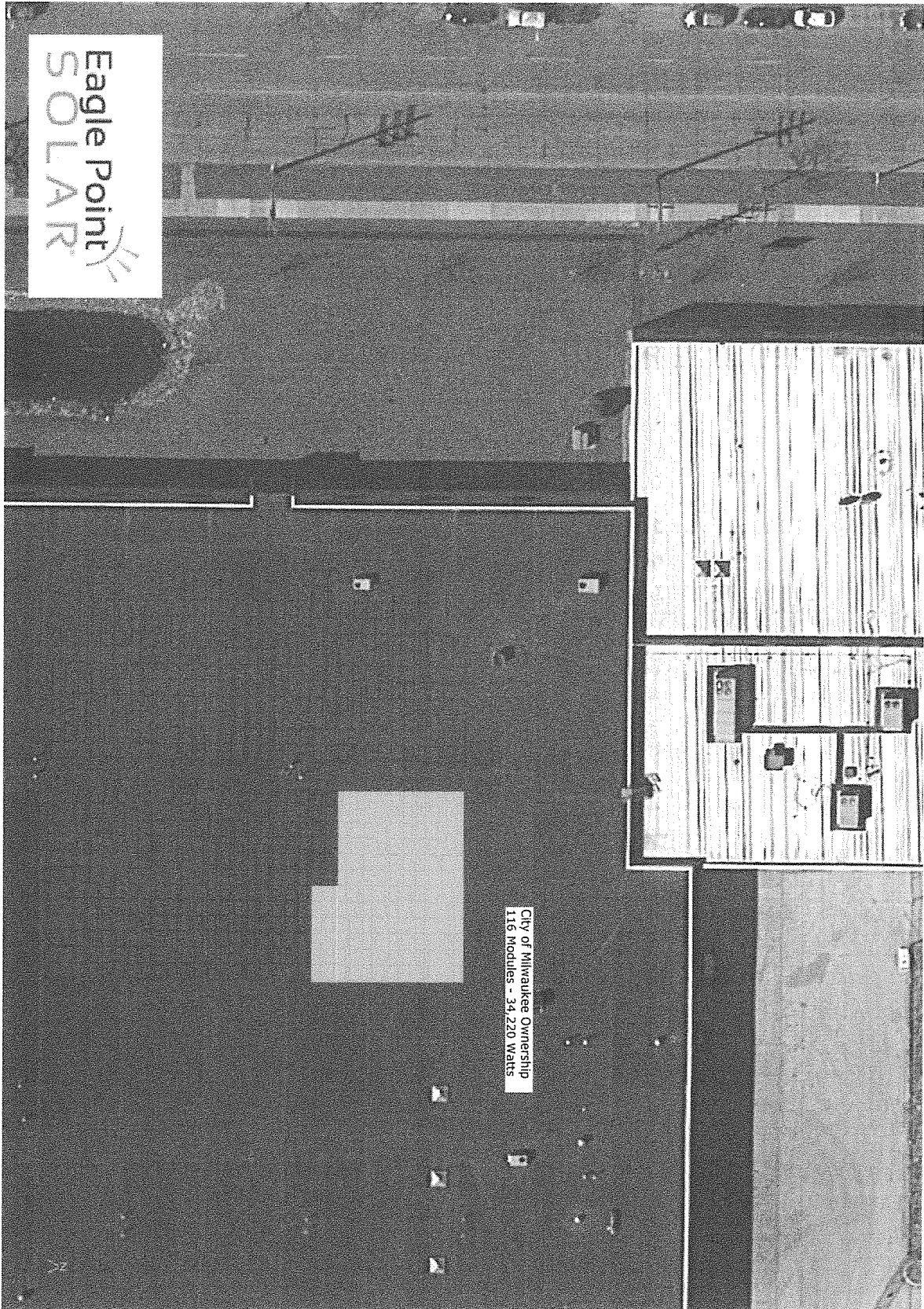


<b>Eagle Point Solar</b> 900 Jackson Street Suite 108 Dubuque, Iowa 52001 563-582-4044	
<b>PROJECT</b> Central Repair Garage Original Meter	
DATE	1
DESCRIPTION	Interconnection plot plan and one line started
REV	1
<b>DESCRIPTION</b> Sheet Description	
EDITION DATE August 31, 2018	
<b>A0.1</b> 1	REVISION 1



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Eagle Point  
SOLAR

City of Milwaukee Ownership  
116 Modules - 34,220 Watts

Eagle Point  
SOLAR

**Eagle Point Solar**  
900 Jackson Street  
Suite 108  
Dubuque, Iowa 52001  
563-582-4044

**PROJECT**  
Central Repair Garage  
New Meter

REV	DESCRIPTION	DATE
1	Interconnection plot plan and one line started	1

**DESCRIPTION**  
Sheet Description

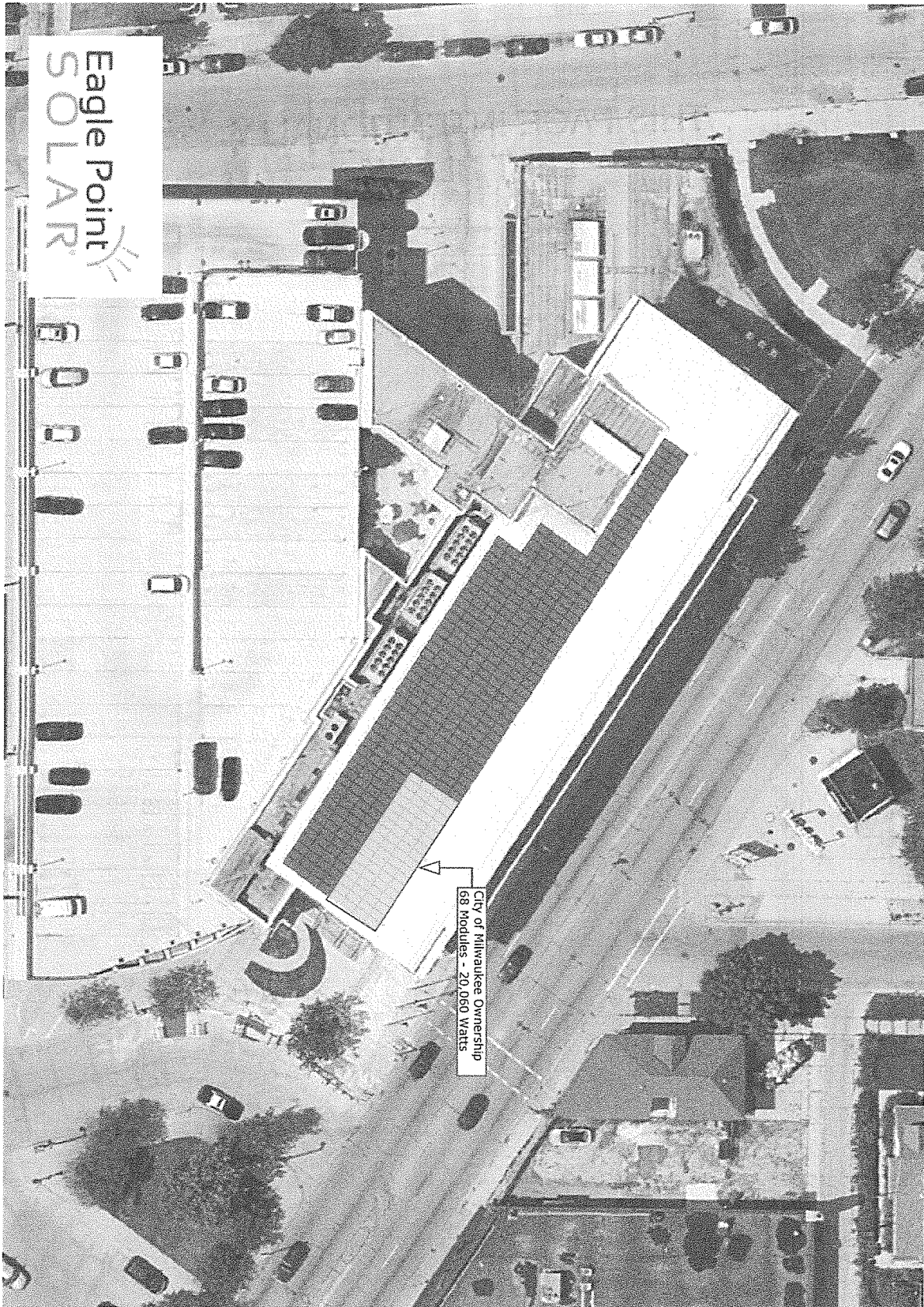
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August 31, 2018

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Eagle Point  
SOLAR

**Eagle Point Solar**  
900 Jackson Street  
Suite 108  
Dubuque, Iowa 52001  
563-582-4044

**PROJECT**  
Police District 3

REV	DESCRIPTION	DATE
1	Interconnection plot plan and one line started	1

**DESCRIPTION**  
Sheet Description

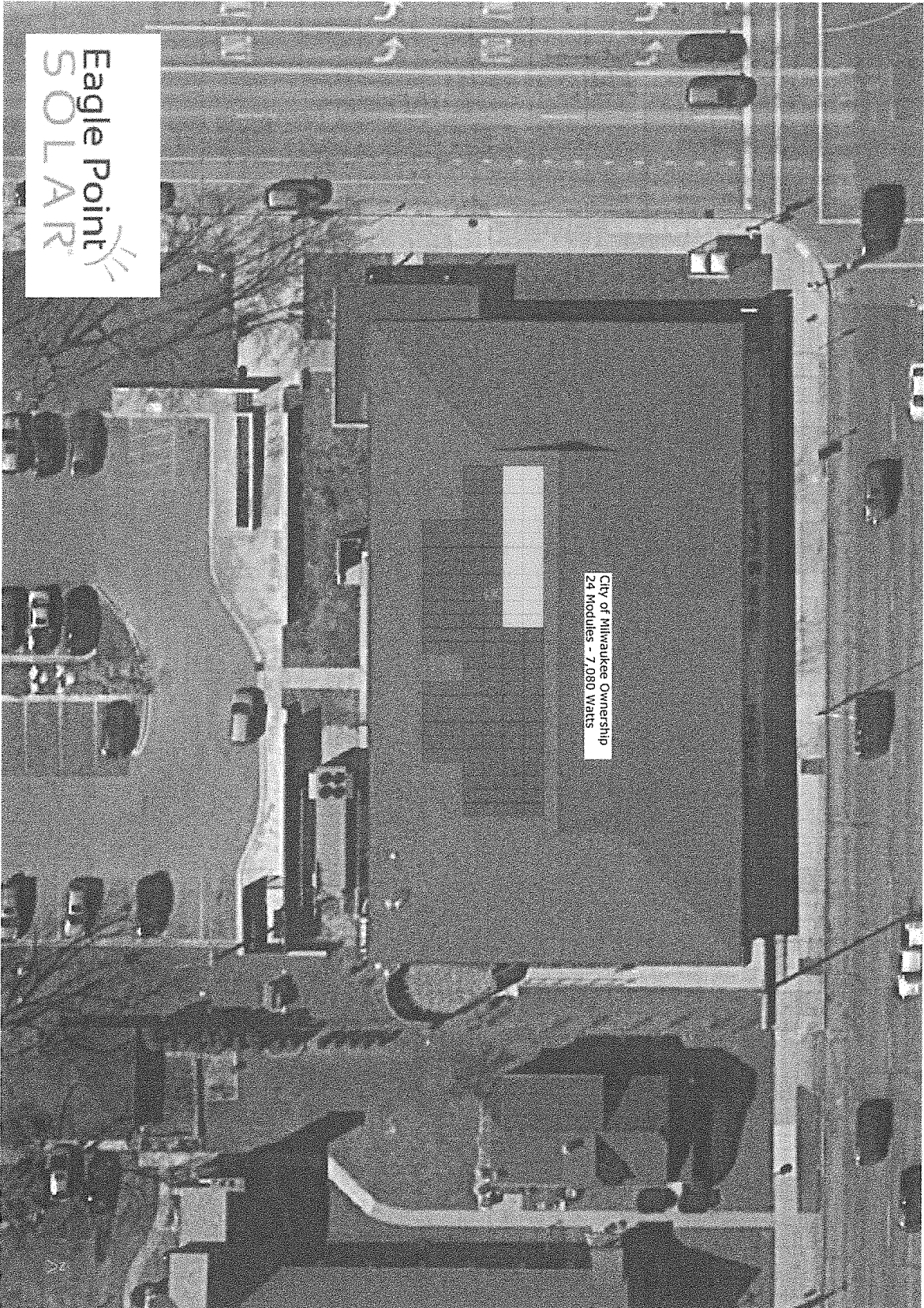
**EDITION DATE**  
August 31, 2018

**AO.1** **REVISION**  
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**Eagle Point**  
**SOLAR**

**Eagle Point Solar**  
900 Jackson Street  
Suite 108  
Dubuque, Iowa 52001  
563-582-4044

**PROJECT**  
Tippecanoe Library

DATE	DESCRIPTION	REV
1	Interconnection plot plan and one line started	1

**DESCRIPTION**  
Sheet Description

**EDITION DATE**  
August 31, 2018

**A0.1** **REVISION**  
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**EXHIBIT D****DESIGNATED PREMISES**

Central Repair Garage

2142 W. Canal St.

CERTIFIED SURVEY MAP NO 3628 IN SW & SE 1/4 SEC 30-7-22 PARCEL  
1 SUBJ TO DNR EASEMENT BID #26

Department of Public Works Field Headquarters

3850 N. 35<sup>th</sup> St.

LOT 2 OF CERTIFIED SURVEY MAP NUMBER 7524 IN THE NORTHEAST 1/4  
OF SECTION 12, TOWNSHIP 7 NORTH, RANGE 21 EAST, INT EHCITY OF  
MILWAUKEE, MILWAUKEE COUNTY, WISCONSIN

Central Library

814 W. Wisconsin Ave.

PLAT OF EAST HALF OF THE NW 1/4 SEC 29-7-22 BLOCK 174 ALL OF SD  
BLOCK BID #05

Police District 3

2333 N. 49<sup>th</sup> St.

Associated Legal Description for 4923 W. Lisbon Ave.: CERT SURVEY MAP  
NO 6898 IN SW 1/4 OF SE 1/4 SEC 14-7-21 PARCEL 1 BID #16

Center Street Library

2727 W. Fond Du Lac Ave.

BLOCK 1 BEING A PART OF GERMANIA PARK IN SE 1/4 SEC 13-7-  
21 BLOCK1 LOTS 1 THRU 7 & LOTS 33 THRU 36 & VAC ALLEY ADJ  
& LANDS ADJ COM NW COR SD LOT 36- TH N 11.79'-TH E 122.81'-TH SELY  
3.16'-TH S 9.56' TH W 125' TO PT OF COM EXC PART DECICATED FOR ST  
IN QCD #8240859 TID #66

Tippecanoe Library

3912 S. Howell Ave.

ASSESSMENT SUBD NO 63 IN NW 1/4 SEC 21-6-22 BLOCK 2 (LOTS 16 & 17)  
EXC W 10' FOR ST & N 195.08' OF W 264' OF SD 1/4 SEC EXC (N 50' & W 77'  
FOR STS)

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**EXHIBIT E****ESTIMATED REPRESENTATIVE NET PRESENT VALUE BUYOUT AMOUNTS****(For EPE-6 Owned Portions of the Respective Systems)**

	Year 7	Year 10	Year 15	Year 20	Year 25
Center Street Library	64,715	60,249	48,433	29,290	3,623
Central Library	137,513	128,024	102,915	62,239	7,393
Central Repair Garage	469,224	436,846	351,168	212,373	26,270
DPW Field HQ	431,928	402,123	323,255	195,492	24,182
Police Distric 3	143,723	133,805	107,562	65,049	8,047
Tippecanoe Library	48,246	44,917	36,107	21,836	2,701
Totals	1,295,349	1,205,966	969,440	586,280	72,216

Note: The above table of Buyout Amounts represents only the 83.6% of the total systems owned by EPE-6. There is no buyout amount for the 16.4% of the respective systems already owned by the City.

The buyout calculations for an individual site, combination of sites, or all sites shall be available at the end of years 7, 10, 15, 20 and 25. The calculations of NPV shall be based on the remaining SSA payments discounted to NPV utilizing a 6.0% discount rate. Buyout at the end of year 25 shall be based on ½ year of the year 25 SSA payment.

The above table represents the expected buyout amounts by location. The allocation of the SSA payments are based on a respective site's KW size divided by the total project size for the six locations.

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**EXHIBIT F****COLLATERAL ASSIGNMENT AGREEMENT**

Assignment of Eagle Point Energy-6, LLC Solar Services Agreement by and between  
(i) Eagle Point Energy-6, LLC; and (ii) the City of Milwaukee Wisconsin

**Customer:**           **City of Milwaukee Wisconsin**  
Environmental Collaboration Office  
Attn: Erick Shambarger  
200 North Wells Street, Room 603  
Milwaukee, WI 53202

**Assignor:**           **Eagle Point Energy-6, LLC**  
900 Jackson St., Suite 108  
Dubuque, IA 52001

**Assignee:**           **BluePath Finance Solar LLC**  
558 Presidio Blvd., Suite B #29048  
San Francisco, California 94129

**FOR VALUABLE CONSIDERATION**, the receipt of which is hereby acknowledged, the undersigned, Eagle Point Energy-6, LLC (herein referred as "Assignor", and as Provider in the City of Milwaukee Solar Services Agreement) hereby **assigns, transfers and sets over unto** BluePath Finance Solar LLC and its successors and assigns (herein referred to as "Purchaser" or "Assignee"), at 558 Presidio Blvd., Suite B #29048, San Francisco, California 94129, all monies due and to become due under the City of Milwaukee Solar Services Agreement, and any revisions, modifications, amendments, options, claims and extensions thereto (hereinafter referred to as the "Contracts").

**ASSIGNOR HEREBY AUTHORIZES AND DIRECTS** the City of Milwaukee Wisconsin, its agents and officers, at the direction of the Assignee, to make all payments due or that may be hereafter due or owing under the Contracts to the Assignee by checks or other orders, payable to the order of the Assignee. Assignor hereby constitutes and appoints Assignee its true and lawful attorney, irrevocably, with full power or substitution for it and in its name or in the name of the Assignor or otherwise, to ask, require, demand, and receive and give acquaintance for any and all said monies due or to become due, and to endorse the name of the Assignor to any checks, drafts or other orders for the payment of money payable to the Assignor.

**ASSIGNOR HEREBY WARRANTS** that it is the lawful owner of all rights under the Contracts and any and all amendments thereof and supplements thereto; that it has good right to assign the same; that its rights are free and clear of all liens and encumbrances and that it will warrant and defend the same against the lawful claims and demands of all persons. Assignor agrees (a) that, if any payment under the Contracts shall be made to Assignor, it will receive and hold the same in trust for Assignee and will forthwith upon receipt deliver the same to Assignee in the identical form of payment received by Assignor, and (b) that it will execute and deliver all such further instruments and do all such further acts and things as Assignee may reasonably request or as shall be necessary or desirable to further and more perfectly assume to Assignee its rights under the Contracts.





ASSIGNEE SHALL NOT HAVE OR BE UNDER any duty whatsoever to perform or carry out any of the obligations undertaken by Assignor under the Contracts.

IN WITNESS WHEREOF, ASSIGNOR HAS EXECUTED THIS ASSIGNMENT THIS 1st DAY OF October 2018.

PROVIDER:

X

BMSH  
Name Barry R. Sharf  
Eagle Point Energy-6, LLC

CUSTOMER:

X

R. H. Ky  
Name Rhonda Kelsey  
City of Milwaukee Wisconsin



AMENDMENT NO. 1 to Contract No. B0000015921 dated 7/18/2018 between the CITY OF MILWAUKEE  
and EAGLE POINT ENERGY-6, LLC  
(CONTRACTOR)

THE AGREEMENT, identified in the above caption by number is hereby amended, modified, altered and changed in the following respects only:

1. THE FOLLOWING EDITS WILL BE MADE TO THE SOLAR SERVICES AGREEMENT (SSA)

a. DELETION OF THE SENTENCE IN 5.1.2, BEGINNING IN THE MIDDLE OF L. 5, PAGE 7: "ANY CREDIT OR SURCHARGE ASSOCIATED WITH THE TRUE-UP MECHANISM PROVIDED FOR IN EXHIBIT B-1 SHALL BE APPLIED TO CUSTOMER'S QUARTERLY INVOICES FOR THE APPLICABLE CONTRACT YEAR."

b. REPLACE EXHIBIT B-1 OF THE SSA WITH A REVISED EXHIBIT B-1A. THE NEW EXHIBIT B-1A IS ATTACHED TO THIS AMENDMENT AS EXHIBIT 1.

2. ALL OTHER TERMS AND CONDITIONS OF THE ORIGINAL CONTRACT REMAIN UNCHANGED.

This Amendment is made in consideration of the payments, performances, promises, and covenants and obligations which are set forth in the original Agreement and as set forth herein.

This Amendment shall in no way act as a waiver of the price, terms, and conditions, not herein amended, imposed on the parties by the original Agreement heretofore executed by them and identified in the above caption. Any rights or obligations which either of the parties has by virtue of the original Agreement shall remain in full force and effect except as is expressly and specifically amended, modified, altered or changed herein.

This agreement constitutes the entire agreement between the parties relating to the subject matter of this Amendment. All prior understandings, agreements, correspondence and discussions of the parties are merged into and made a part of this agreement.


IN WITNESS WHEREOF, this Agreement was executed by the undersigned officers as of the dates hereinafter specified for and on behalf of the parties hereto.

THE PROVISIONS OF THIS AMENDMENT HAVE BEEN REVIEWED AND APPROVED BY THE OFFICE OF THE CITY ATTORNEY.

City of Milwaukee

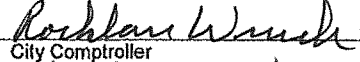
Contractor

(Must be signed by persons authorized to legally bind your firm to this contract)

  
City Purchasing Director

11-8-2018  
Date

Rhonda U. Kelsey  
Printed Name

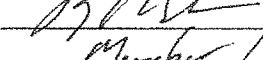
  
City Comptroller

11/9/18  
Date

  
Printed Name

Firm: EAGLE POINT ENERGY-6, LLC  
Address: 900 JACKSON ST  
City, State, Zip: DUBUQUE, IA 52001

E-mail: BSHEAR@EAGLEPOINTSOLAR.COM  
JPULLEN@EAGLEPOINTSOLAR.COM

Signature:   
Title: Manager / Manager

Printed Name: Barry R. Shear

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

Witness Signature: 

Witness Signature: \_\_\_\_\_

**EXHIBIT B - 1A**

Revised 10/31/2018

**Schedule of Service Agreement Payments**

Contract Year	Combined Projected Output	Milwaukee	EPE-6	Annual Payment Amount	Quarterly Payment Amount
		Owned Projected Output	Owned Projected Output		
1	1,372,000	225,000	1,147,000	109,000	27,250
2	1,365,000	224,000	1,141,000	111,000	27,750
3	1,358,000	223,000	1,135,000	113,000	28,250
4	1,351,000	221,000	1,130,000	115,000	28,750
5	1,344,000	220,000	1,124,000	118,000	29,500
6	1,338,000	220,000	1,118,000	120,000	30,000
7	1,331,000	218,000	1,113,000	122,000	30,500
8	1,324,000	217,000	1,107,000	125,000	31,250
9	1,318,000	216,000	1,102,000	127,000	31,750
10	1,311,000	215,000	1,096,000	130,000	32,500
11	1,305,000	214,000	1,091,000	132,000	33,000
12	1,298,000	213,000	1,085,000	135,000	33,750
13	1,292,000	212,000	1,080,000	138,000	34,500
14	1,095,000	21,000	1,074,000	140,000	35,000
15	1,279,000	210,000	1,069,000	143,000	35,750
16	1,272,000	208,000	1,064,000	146,000	36,500
17	1,266,000	208,000	1,058,000	149,000	37,250
18	1,260,000	207,000	1,053,000	152,000	38,000
19	1,253,000	205,000	1,048,000	155,000	38,750
20	1,247,000	205,000	1,042,000	158,000	39,500
21	1,241,000	204,000	1,037,000	161,000	40,250
22	1,235,000	203,000	1,032,000	164,000	41,000
23	1,228,000	201,000	1,027,000	168,000	42,000
24	1,222,000	200,000	1,022,000	171,000	42,750
25	1,216,000	199,000	1,017,000	174,000	43,500